
EVALUATOR MANUAL TRANSMITTAL SHEET

<u>Distribution:</u> ____ All Child Care Evaluator Manual Holders ____ All Residential Care Evaluator Manual Holders <u> X </u> All Evaluator Manual Holders	<u>Transmittal No.</u> 03RM-08
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REFERENCE MATERIAL – COMPLAINTS SECTION

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To update Sections 3-2325, 3-2330, 3-2600, 3-1660.2, 3-2610, 3-2620.1, 3-2628

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3-2010 GENERAL STATEMENT

3-2010

A complaint is **an** allegation that **any** Department of **Social Service** licensing regulation or law is being violated. The source of the information may be **anyone, including** a child, client, parent, guardian, conservator, authorized representative, relative, representative of a client, facility employee, neighbor, an agency using the facility and/or others in the community. The information may be given by a person who may not indicate it is a complaint, but believes there is a problem. As long as the information raises reasonable questions about the care of the clients or the condition of the facility that could possibly be a violation of **one or more** licensing regulations, record the information as a complaint and follow the complaint procedures.

Analysts need not initiate a complaint against a facility in order to authorize a visit. If an analyst has a concern about a facility in their own caseload that arises from an incident report, for example, that concern will be handled as a case management visit. This does not prevent an analyst from initiating complaints in situations involving facilities outside of their own caseloads. An example of this would be if an analyst is a parent of a child in a licensed day care facility and, as a parent, wishes to report an allegation of non-compliance. Another example would be if an analyst has a parent or relative residing in a residential facility. Also, analysts should report possible violations of Title 22 regulations they observe, even outside their own caseload, to the responsible analyst or **Local Unit Manager**. **These reported situations will be evaluated and handled as complaints.**

Foster Family Agencies investigated complaints about Certified Family Homes **beginning in 1993**. Since June 28, 1999, **statutory law** requires the Department to assume complaint investigations of Certified Family Homes. Because third parties **were** accustomed to reporting complaints directly to the Foster Family Agency, it is necessary during the transition for Foster Family Agencies to report those third party complaints to the Department and for the Department to treat those third party complaints as complaints, not as incident reports. If a Foster Family Agency reports a complaint made about a Certified Family Home by a third party, (in some situations staff and/or clients can be third parties), treat this report as a complaint.

While this section of the Evaluator Manual is restricted to complaint investigations and visits, it is by no means exhaustive. The purpose of this section is to provide guidance in the complaint process: receiving, analyzing, researching and investigating information alleging violations of licensing laws and regulations of Community Care Licensing Division regarding allegations of abuse. This Reference Section is intended to provide information for planning a course of action for resolving a variety of problems that can occur within facilities. This information is not a replacement for individual judgment; nor can it substitute for ongoing counsel from your **Local Unit Manager**.

The analyst is responsible for promptly initiating and following through on complaint investigations in the designated time frames mandated by law and the procedures outlined in this manual. However, there are situations when other entities may be involved and actually conduct the investigation.

3-2010 GENERAL STATEMENT (Continued)

3-2010

Upon receiving allegations involving priority I or II situations, the analyst is responsible for referring the complaint to the appropriate **Program Investigations Unit** prior to initiating any action on the complaint. **(These referral procedures do not apply to county licensing workers.)** If a law enforcement agency is in the process of conducting an investigation, it is still necessary to refer the case to **Program Investigations**.

Priority I (MANDATORY REFERRAL)

1. Complaints of **sexual abuse** that involve the penetration of the genitals, anus, or mouth of any of the persons involved (including, but not limited to rape, oral copulation, sodomy, use of a foreign object) when:
 - a. The victim is a client or the alleged sexual conduct poses a potential health and safety risk for clients.
 - b. The suspect may or may not be associated with the facility (for example: licensee, staff, relatives of licensee, unknown perpetrator).
 - c. The abuse is alleged to have occurred in the facility or while the client was under the care and supervision of the licensee/staff.
2. Complaints of **physical abuse** that involve acts resulting in great bodily injury such as broken bones, severe cuts, head injuries, burns, when:
 - a. The victim is a client or the alleged physical abuse poses a potential health and safety risk for clients.
 - b. The suspect may or may not be associated with the facility (for example: licensee, staff, relatives of licensee, unknown perpetrator).
 - c. The abuse is alleged to have occurred in the facility or while the client was under the care and supervision of the licensee/staff.
3. Complaints involving suspicious circumstances regarding the **death** of a client, either in or out of the facility.
4. Complaints of lack of **care and supervision** which result in Priority I sexual or physical abuse to a client. Also included, but not limited to, stage three and four dermal ulcers, malnutrition, dehydration, hypothermia, etc.
5. Complaints of **abuse** that involve acts such as assault and/or battery, that if successful, would result in death or great bodily injury (for example: licensee/staff firing a weapon at a client, use of an object/weapon on a client that could inflict death or great bodily injury).

3-2010 GENERAL STATEMENT (Continued)

3-2010

6. Complaints of **unlicensed operation** where a temporary suspension order is in effect or the license has been revoked. Complaints of unlicensed care that involve Priority I allegations such as, physical abuse, sexual abuse, death or lack of care.
7. Complaints of licensee, staff, others residing or present at the facility providing, using, selling or manufacturing **drugs** that may result in **felony offenses** (for example: methamphetamine, cocaine, heroin, psychedelics, LSD, PCP).

Priority II (MANDATORY REFERRAL)

1. Complaints of **sexual abuse** that involve sexual behavior (not penetration) such as voyeurism, masturbation, exhibitionism, exploitation, inappropriate sexual touching, and/or fondling, when:
 - a. The victim is a client or the alleged sexual conduct poses a potential health and safety risk for clients.
 - b. The suspect may or may not be associated with the facility (for example: licensee, staff, and relatives of licensee, unknown perpetrator).
 - c. The abuse is alleged to have occurred in the facility or while the client was under the care and supervision of the licensee/staff.
2. Complaints of **physical abuse** that involve acts resulting in minor injuries or bruises, when:
 - a. The victim is a client or the alleged physical abuse poses a potential health and safety risk for clients.
 - b. The suspect may or may not be associated with the facility (for example: licensee, staff, relatives of licensee, unknown perpetrator).
 - c. The abuse is alleged to have occurred in the facility or while the client was under the care and supervision of the licensee/staff.
3. Complaints of actions by a facility operator, the licensee, a facility employee, volunteer, another client, or unidentified suspect that may result in **felony offenses** (for example: robbery, arson, grand theft, chemical restraint).
4. Complaints of **unlicensed operation** where entry has been denied to Community Care Licensing Division staff. Complaints of unlicensed operation that involve Priority II allegations.

3-2010 GENERAL STATEMENT (Continued)

3-2010

5. Complaints of licensee, staff, others residing or present in the facility using, or selling illegal drugs other than “felony” drugs (for example: marijuana, alcohol-provided to minors).

Priority III (OPTIONAL REFERRAL)

1. Complaints of **physical abuse** that involve acts such as assault and/or battery, shoving, pushing with no injuries or bruises.
2. Complaints of actions by a licensee, facility employee, volunteer, other clients, or unidentified suspect of **misdemeanor** offenses, including but not limited to, neglect, or lack of supervision.

Priority IV (REGIONAL OFFICE RESPONSIBILITY)

1. Complaints of physical punishment/corporal punishment to clients defined as spanking (using the hand), lack of supervision that did not result in any abuse or injury, unsanitary conditions and other regulatory violations.
2. Includes complaints of client on client conduct that does not meet Priority I, II, or III criteria.

If for some reason **Program Investigations** is unable to accept the referral on a priority I or II case, **Program Investigations** can still be used as a resource. The Licensing Program Analyst or **Local Unit Manager** can contact the Investigator assigned to that **Regional Office** or the Supervising Investigator for guidance on difficult investigations or advice on interviews. **Program Investigations** can be of particular value to an inexperienced Licensing Program Analyst or with intricate issues rarely handled by Licensing Program Analysts.

Analysts will be required to assume primary responsibility for complaint investigations involving serious physical abuse, sexual assault or suspicious death only if a law enforcement agency or **Program Investigations** are unable to conduct the investigation. When conducting these types of investigations, the analyst must adhere to the procedures specified in **Evaluator Manual** sections 3-2600 through 3-2650, **Complaints Alleging Abuse**.

The term “analyst” or “Licensing Program Analyst” is used throughout this section and includes both State and county licensing workers. (Refer to the Definition Section in California Code of Regulations, Sections 80001 (e) (3), 87101 (e) (3), 101152 (e) (12) and 87001 (e) (1). Distinctions between State and county personnel are specified.

The term “Child Care Facilities” is used throughout this section and includes both Child **Day** Care Centers and Family Child Care Homes.

3-2011 COMPLAINTS FOLLOWING THE RECEIPT OF INCIDENT REPORTS**3-2011**

Reports generated by the facility to notify the licensing agency of special incidents, death or injury, use of restraints, outbreak of disease, personnel changes, structural changes and other information of a critical or emergency nature are not considered complaints. Even though these reports may indicate a range of problems with the facility, and may require a special inquiry, evaluation and follow-up, the information is an admission by the facility that the event did actually happen and thus is not suitable for investigation as a complaint allegation. However, if another individual reports the same incident as a complaint, the **Regional** Office should accept the allegation as a complaint and then follow up as appropriate. If the information provided by the complainant is different or is in conflict with what the licensee reported, further investigation and a visit may be warranted. If the information is exactly the same and the **Local Unit Manager** is satisfied with the follow up that was done after the incident report was received, no further action may be required.

Complaints may be received by telephone, letter or in person. Complaint contacts should be handled by analysts rather than clerical staff. Complainants should be treated with courtesy and assured of the Department's concern for quality of care in licensed facilities.

At times, complaints may involve allegations that are not within the scope of the licensing agency; for example, a disgruntled employee calls to complain about wages, hours or unfair working conditions. If known, refer the complainant to the appropriate agency, in this case, to the Department of Industrial Relations. Refer complaints about county-licensed facilities to the county licensing agency, even if that facility is a Foster Family Home used by a Foster Family Agency.

Complaints about alcohol and/or drug treatment facilities for adults must be referred to the Department of Alcohol and Drug Programs, the agency with complete oversight jurisdiction. Community Care Licensing Division no longer licenses these types of facilities.

Many complainants feel uneasy about calling the licensing agency. Assure complainants of their right to register a complaint and to have their identity remain confidential. Advise callers **that** their identity will be kept confidential even if they provide their names, addresses or telephone numbers for further contact. However, complainants should be advised that occasionally licensees are able to identify a complainant from sources other than the licensing agency or by the nature of the allegation itself. If this occurs, the licensing agency is still required to withhold any information regarding the complainant.

The protection of confidentiality applies to all complainants, even if they are organizations rather than individuals. Therefore, if the complaint is referred to Community Care Licensing Division by another agency, e.g., resource and referral, the licensee is not entitled to know the identity of the agency unless the complainant waives his/her/**its** right to confidentiality.

Analysts are encouraged to keep a supply of blank Complaint Reports (LIC 802) near the telephone **or in their computer** for use when taking complaint information. When accepting a complaint, the analyst should identify not only the problem but how the complainant received knowledge of the problem and the extent to which he/she may be a resource in investigating the complaint. This includes an evaluation of the complainant's ability for making judgments and his/her willingness to provide a statement or act as a witness, if needed. (See Section 3-2110 for Recording a Complaint).

3-2011 COMPLAINTS FOLLOWING THE RECEIPT OF INCIDENT REPORTS (Continued)**3-2011**

If the complainant requests a copy of the Complaint Investigation Report (LIC 9099) when the investigation is completed, this can be done if the LIC 9099 has been marked “public” and filed in the Public Section of the licensing file. The only time a copy of the LIC 9099 cannot be sent to the complainant would be a situation where the complaint allegation **for any Community Care Facilities (excluding Residential Care Facilities for the Chronically Ill) or any child care Facilities (excluding Adult Day Care)** is “unfounded” and the LIC 9099 has been marked “confidential” and filed in the Confidential Section of the licensing file. Complainants should be informed of the Department’s complaint procedures and their right to review a copy of the Complaint Investigation Report (LIC 9099).

When complaints are received by mail, the Complaint Response (LIC 856) should be completed and the white copy mailed to the complainant. When complaints are received by telephone or in person, the complainant should be verbally informed that the complaint allegations will be investigated and that he/she will be notified of the results. If it is not possible to reach the complainant by phone, the LIC 856 can be used. On occasion, it may be more appropriate to provide information to the complainant via letter rather than sending the LIC 856. A copy of the letter, or any additional correspondence to the complainant, is not to be sent to the licensee. When a client files a complaint about the facility in which he/she resides, never contact him/her by mail because the client’s confidentiality cannot be protected.

If the complainant wants to **be** anonymous and refuses to give any identifying information (i.e., phone number or address), the analyst will not be able to contact him/her with the results unless the complainant wishes to call back at a later date.

3-2110 RECORDING THE COMPLAINT**3-2110**

The official form for recording the complaint is the Complaint Report (LIC 802). Often the complaint is received in a rambling narrative format, which must be summarized and entered onto the LIC 802. It is important to capture the “who”, “what happened”, “when”, “where”, “why” and “how”. If the information was received by mail, attach the narrative to the LIC 802 as supplemental detail.

The summary should provide the basic elements/allegations of the complaint; for example, a complainant may be calling to inform the agency about “poor care” in a certain facility, but after talking with him/her the analyst discerns that the problem could possibly be lack of supervision, untrained staff and verbal abuse of clients or children. The latter definitive problems should be recorded on the LIC 802 as separate allegations. All allegations or elements of the complaint shall be listed separately and assigned a complaint code number based on the nature of the allegation.

3-2110 RECORDING THE COMPLAINT (Continued)**3-2110**

The code numbers, which are listed on the LIC 802, are to be written in the “code column”, located on the left-hand margin of the form. The complaint codes are as follows:

- | | |
|---------------------------------------|------------------------|
| 1. Physical Abuse/Corporal Punishment | 11. Food Service |
| 2. Sexual Abuse | 12. False Statements |
| 3. Personal Rights | 13. Medication |
| 4. Unlicensed Care | 14. Financial Abuse |
| 5. Fire Clearance | 15. Level of Care |
| 6. Crimes | 16. Qualifications |
| 7. Physical Plant | 17. Financial Issues |
| 8. Record Keeping | 18. Questionable Death |
| 9. License | 19. Other |
| 10. Neglect/Lack of Supervision | |

The analyst taking the complaint needs to obtain as much specific information as possible during this initial contact in order to identify those regulations/laws which may have been violated. In some situations the analyst may have to ask probing specific questions to determine if a licensing violation has occurred. In other situations, the analyst may have to weed through an avalanche of information and comments to find a single licensing violation. A complaint should not be written up unless a licensing violation or inimical conduct is alleged. Questions regarding the date(s) the allegations occurred, names, if appropriate, etc., should be asked throughout the conversation. If there are allegations regarding food and housekeeping, the complainant should be asked to describe the substandard conditions in detail.

If during the conversation, the complainant reveals information that would be pertinent to the complaint investigation, the analyst should document this additional information on the back of the LIC 802 in the top section marked “Details of Allegation(s)/Description of Incident(s)”. If more space is needed, use an LIC 812, Detail Supportive Information form and attach it to the Complaint Report. All allegations should be written in a clear concise manner, so anyone reading the LIC 802 understands exactly which law or regulation has allegedly been violated.

When the complainant alleges abuse, the analyst must remember to capture the essential information for filing the required reports of suspected abuse. The analyst should ask what agencies have been notified of the abuse (i.e., law enforcement), if the victim was taken to a physician or hospital and, if so, are there photographs available of the bruises, burns, cuts, etc. Details should be documented on the top back section of the LIC 802 or on an LIC 812 form. It should also be noted if the complainant was unable to provide specific details. This will indicate that the information was requested.

3-2120 ESTABLISHING CONTROLS**3-2120**

An on-site facility visit must be made within ten **calendar** days after receipt of a complaint, **except** when the complaint involves any death of a child or questionable death of an adult or elderly client. A site visit must be made within **two business days** after receiving a complaint of a questionable death (death resulting from injury, abuse, or other than natural causes) of an adult or elderly client or any death of a child.

Calendar days are counted in the following way:

1. The day the complaint is received is not counted.
2. The date on which the visit is due is counted as the 10th day, unless that day is a Saturday, Sunday, or official holiday.

If the due date falls on a Saturday, Sunday, or official holiday, then the mandatory site visit must be accomplished on the following workday if not before.

Business days are counted in the following way:

1. The day the **death** complaint is received is not counted.
2. The date on which the visit is due is counted as the second business day.

Saturday, Sunday, Holidays and Official Holidays are not counted as a business day.

Example:

Calendar Days		Business Days	
Thursday	Complaint received	Thursday	Death Complaint Received
Friday	Day 1	Friday	Day 1 – First Business Day
Saturday	Day 2	Saturday	
Sunday	Day 3	Sunday	
Monday	Day 4	Monday	Day 2 – Second Business Day- Visit Due
Tuesday	Day 5	Tuesday	
Wednesday	Day 6	Wednesday	
Thursday	Day 7	Thursday	Death Complaint Received
Friday	Day 8	Friday	Day 1 – First Business Day
Saturday	Day 9	Saturday	
Sunday	Holiday	Sunday	Holiday
Monday	Official Holiday	Monday	Official Holiday
Tuesday	Day 10 - Visit Due	Tuesday	Day 2 – Second Business Day- Visit Due

After accepting complaint information the analyst must follow the **Regional** Office procedures which ensure that the complaint is logged on the Complaint Control Log (LIC 957), receives a control number, a due date, and quickly routed to the appropriate analyst. This process is normally done by support staff as outlined in Section 700 of the **Regional** Office Procedures Manual.

At this point, the complaint becomes a workload assignment. The analyst should immediately record the control log information into his/her Field Control Book. This practice prevents the assignment from being forgotten and assures that the mandatory investigative timetables will be monitored.

3-2200 PLANNING THE INVESTIGATION**3-2200**

Because complaint investigations involve more “leg work” than routine facility evaluations, it is important to plan an investigative approach to ensure comprehensive data gathering in the event the investigation results in an administrative action.

Upon receiving the complaint assignment, identify the extent of the problem and the laws and regulations that may have been violated. A **Local Unit Manager** should be immediately informed of all allegations **that**, if true, would endanger the health and/or safety of any clients or children in care. Allegations of abuse and other immediate health and safety threats are always first priority. If the complaint information is incomplete, the complainant should be contacted for more details. Record this additional information on the back of the LIC 802 in the section marked “Pre-Investigation Contact with Complainant.”

By law (Welfare & Institutions Code 9721), complaints referred by the Office of the State Long-Term Care Ombudsman are given priority. Additionally, in 1982, Assembly Bill 2997 (Chapter 1457) (Welfare & Institutions Code 9725) was passed stating that the identification of a resident “shall remain confidential unless disclosure is authorized by the patient or resident or his or her conservator or legal representative.” Thus, if the Ombudsman is referring a complaint on behalf of a client and refuses to relinquish any client identifying information, the analyst shall still accept the submitted information as a complaint and proceed with the investigation. If the investigation is difficult to pursue because of insufficient client-related information, the Ombudsman should be re-contacted. The difficulty should be explained and all possible information collected from the Ombudsman. The investigation shall commence on the basis of available information, as with complaints from other sources.

Prior to making a complaint site visit, the analyst must review the file, and according to **Regional** Office procedures, discuss the serious cases with a **Local Unit Manager**. During the file review, the number and kind of substantiated complaint violations should be noted. This information may be needed later to determine if the licensee (Community Care Facilities only) will have to be notified to send copies of the LIC 9099s to the clients’ authorized representatives should this complaint be substantiated (Refer to Evaluator Manual section 3-2330, **Special Documentation Requirements for Community Care Facilities**). Any records which are not confidential and which may be helpful can be photocopied for reference during the site visit.

If there is a complaint about a Certified Family Home, consider contacting other **Regional** Offices that have Certified Family Homes associated with the same Foster Family Agency. The purpose of this contact is to determine whether there is the same type of problem with many Certified Family Homes of the same Foster Family Agency. If this appears to be true, Analysts should investigate whether there may be a systemic problem within that Foster Family Agency.

Analysts are mandated by law to report suspected abuse. (Refer to Evaluator Manual sections 3-2600 through 3-2630 for investigating abuse, 4-0000 for reporting procedures, and California Code of Regulation, Sections 80044 and 80045 for **Community Care Facilities**; 87344 and 87345 for Residential Care Facilities for the Elderly; 87044 and 87045 for Foster Family Homes; 101200 and 101201 for Child Care Centers; and Evaluator Manual section 3-2300 for details on preparing for the visit.)

3-2210 PRIORITIZING AND EVALUATING THE COMPLAINT**3-2210**

Analysts are responsible for making their **Local Unit Managers** aware of all complaints, especially those concerning the health and safety of children and clients. The **Local Unit Manager** and analyst may jointly decide it is necessary for the analyst to make an immediate visit.

In offices serving remote areas, it may be expedient for the **Local Unit Manager** to call an analyst in the field to respond to the complaint because he/she may be in the general location of the facility.

The following are examples of complaint situations seriously endangering the health and safety of clients or children:

1. Fire hazards
2. Misuse of medication
3. Priority I or II Allegations

Sometimes complaints are filed with the licensing agency in order to harass a licensee. Suspected harassment, i.e., repeated complaints which have over time never been substantiated, should be thoroughly documented detailing considerations of the complainant's motivation, the number of times the complainant has filed allegations against the facility, how recently the last inspection was made, history of the facility, and the probability that the violation exists.

It is essential for an analyst to exercise caution when dealing with complaints which involve neighborhood disputes. Even though the complaint may be filed as the result of unrelated disputes or hard feelings, the basis for the complaint may be factual. It is the determination of this factual basis that is the concern of the Department. In most cases, at least one site visit will be necessary to assess the situation. During the visit, complaint details and observations must be carefully recorded.

Regardless of whether harassment is determined, the Complaint Report (LIC 802) should be completed. Elements of the complaint should be listed on the front, the rationale for suspected harassment on the reverse side. The LIC 802 then follows the normal control procedures and is sent to the **Local Unit Manager** for review. If the **Local Unit Manager** is in agreement that the complaint is harassment and without substance, he/she would sign off; thus, a site visit would not be required.

3-2230 COMPLAINT CONSULTANTS**3-2230**

Some complaint investigations may require technical knowledge and expertise beyond the capabilities and/or duties of licensing staff. Assistance with these cases is available to State licensing offices from consultants under contract with the Department and from other State or local agencies. Most often these services are useful during a joint visit to the facility.

The consultants under contract specialize in medicine, nursing, nutrition, pharmacology, psychiatry and psychology. These services can be requested through a **Local Unit Manager**.

3-2230 COMPLAINT CONSULTANTS (Continued)**3-2230**

Other agencies whose technical assistance may be very valuable and may have a mutual interest in the facility include:

1. Local fire departments
2. State/local health departments
3. Client advocate groups
4. Placement agencies
5. Protective service agencies
6. Law enforcement agencies
7. Resource and referral agencies

3-2240 USE OF LAW ENFORCEMENT BACK-UP**3-2240**

In cases where there may be physical danger to the analyst, (i.e., investigation of unlicensed operations in high crime areas or situations where drug dealing is part of the allegation) the analyst and **Local Unit Manager** may determine that local law enforcement back up is necessary. This should be arranged prior to the visit and noted on the LIC 802.

3-2300 CONDUCTING THE SITE VISIT**3-2300**

The purpose of **Evaluator Manual** sections 3-2305 through 3-2400 is to provide basic guidelines to the analyst for resolving complaints that do not involve allegations of physical or sexual abuse. Upon receipt of these complaints, the licensing agency must respond within ten calendar days.

3-2305 ENTRANCE INTERVIEW**3-2305**

Complaint visits are made without prior notice to the licensee; in other words, they are “unannounced”. Before entering the facility, the analyst must identify him/herself to the licensee, or person in charge. Once inside the facility, the analyst should explain the purpose of the visit and the basic elements of the complaint. In all cases except those involving Priority I or II allegations, the analyst shall apply the standard practice of divulging the substance of the complaint during the ten-day on-site visit. Refer to Evaluator Manual sections 3-2325, **Complaints Involving Facilities That Are Not Owner-Occupied**, 3-2605, **Assisting Other Investigatory Agencies**, and 3-2610, **Investigating Allegations of Abuse**, for details on exceptions to this rule.

If there is a complaint about a Certified Family Home, the analyst may involve the Foster Family Agency before the ten-day on-site complaint visit to the Certified Family Home. However, the substance of the complaint must not be revealed before the Certified Family Home complaint visit as required by Health and Safety Code Section 1538(b).

The analyst must review the Foster Family Agency's Certified Family Home record before or after visiting the Certified Family Home.

3-2305 ENTRANCE INTERVIEW (Continued)**3-2305**

During the entrance interview at the facility site/Certified Family Home, the analyst should explain:

1. The law requires that all complaints be investigated.
2. The complaint is an allegation, not an accusation, of wrongdoing.

Following this, the analyst should briefly outline what he/she intends to do while in the facility/Certified Family Home, how the licensee/authorized representative/Certified Family Home parent can assist and that, before leaving, the findings will be discussed with the licensee.

The licensee/designated representative should also be told that if deficiencies are found, they will be described on the Licensing Report and that there will be an opportunity to develop a written Plan of Correction on the report during the exit interview. The Foster Family Agency staff will handle the written Plan of Correction for the Certified Family Home parent.

The licensee/authorized representative should be further advised that he/she may use space on the Licensing Report to document his/her point of view and that signing the report does not imply agreement with the findings but is acknowledging receipt of the licensing report.

3-2310 REVIEW OF THE FACILITY**3-2310**

When visiting the facility or Certified Family Home in response to complaint allegations, the primary focus is to thoroughly investigate all elements of the complaint. Investigating an allegation of inadequate food served at mealtime, for example, should involve checking the quantity and quality of perishable and staple foods, the menus, the diets, and dieticians' reports where appropriate. Additionally, the analyst should try to schedule the visit prior to and during meal times and appropriately **note** this information on the Complaint Investigation Report (LIC 9099). The report should also include the analyst's observation of the preparation, handling and serving of meals; interviews with clients, children, and kitchen staff; check of the food in storage; and inspection for contamination.

In some cases, the complaint may be easily solved and there may be time for other evaluations that may be due, such as post-licensing, annual, etc. However, if secondary evaluations are conducted, the findings must be documented on the LIC 809 separate from the findings of the complaint investigation (LIC 9099). Refer to **Evaluator Manual** section 3-3105 of the Documentation Section.

In other cases, the allegations may be such that a comprehensive evaluation is required during the visit in order to resolve the complaint. If additional complaint related deficiencies are found during this comprehensive evaluation, those deficiencies may be documented on the same LIC 9099 if space permits.

However, if during the comprehensive evaluation there are unrelated deficiencies found, both a LIC 809 and a LIC 9099 must be completed. For example, the analyst receives a complaint alleging inadequate supervision. While at the facility investigating the complaint, the Licensing Program Analyst finds a broken window with sharp jagged edges. Because the broken window is not directly related to the complaint allegation, the analyst must report the findings of the broken window separately on a LIC 809. At the top of the LIC 809, under type of visit, the "MANAGEMENT" box should be checked, as this finding has nothing to do with the original complaint received. The complaint findings would be documented on a LIC 9099.

3-2315 DOCUMENTING THE INVESTIGATION**3-2315**

The official form for documenting the investigation is the Complaint Investigation Report (LIC 9099). (Refer to Evaluator Manual section 3-3125.) The LIC 9099 is intended for use in the field as an expeditious means of reporting and recording the analyst's findings. With the exception of "unfounded" complaints, it is also a public record of the licensee's/operator's response and agreed upon corrections and dates.

The analyst will complete the LIC 9099, after the appropriate facility inspection, records review, and interviews, and prior to departing. When selecting a place in which to write the report, the analyst should request a location which prevents disruptions to the facility schedule and which minimizes interruptions of the analyst's work. In special situations it may be necessary to leave the facility to write the report and then return to present the findings and obtain a Plan of Correction. Except in cases where the complaint is determined to be unfounded, the LIC 9099 must not be mailed to the licensee in lieu of a return visit. With Certified Family Home investigations, give the LIC 9099 to the licensee or designated representative of the associated Foster Family Agency.

The Complaint Investigation Report includes an identification of who conducted the investigation, the purpose of the visit, who was contacted at the facility, followed by the complaint allegation and a summary of the investigation findings. When documenting the investigation findings, the analyst should be specific regarding the allegation and the reason for the determination of findings. The report must conclude with a resolution for the complaint allegation. For allegations that require further investigation, refer to Evaluator Manual section 3-2640, Informing the Licensee of Complaint.

NOTE:

1. For special documentation instructions regarding Community Care Facilities, Residential Care Facilities for the Elderly and Residential Care Facilities for the Chronically III, that are not owner-occupied, refer to Evaluator Manual section 3-2325, Complaints Involving Facilities That Are Not Owner-Occupied.
2. For Certified Family Home investigations, give a LIC 9099 to the licensee or designated representative of the associated Foster Family Agency.

If the complaint is substantiated, the facility must be cited. The deficiencies would be cited by regulation number and a Plan of Correction date would be established on the LIC 9099. At this time the analyst should advise the licensee of his/her right to provide comments on the LIC 9099 regarding the complaint. In addition, the licensee may submit a letter to respond to the LIC 9099 and these documents become a matter of public record. The licensee should be advised that any comments made on the LIC 9099 or additional documents for the public record must not include names of clients or family of clients. (Refer to Evaluator Manual section 3-3125 for instructions for completing an LIC 9099.)

The following resolution codes shall be used when determining the status of complaints:

- (S) **Substantiated** – A finding that the complaint is *substantiated* means that the allegation is valid because the preponderance of the evidence standard has been met.
- (I) **Inconclusive** – A finding that the complaint is *inconclusive* means that although the allegation may have happened or is valid, there is not a preponderance of the evidence to prove that the alleged violation occurred.

3-2315 DOCUMENTING THE INVESTIGATION (Continued)

3-2315

- (U) **Unfounded (formerly not substantiated)** – A finding that the complaint is *unfounded* means that the allegation is false, could not have happened, and/or is without a reasonable basis.

The following documentation procedures are to be used for all facility categories, **except as noted in #3 below:**

1. The analyst is to inform the licensee or designated representative of all specific allegations at the time of the initial visit, except for those complaints involving suspected abuse. Refer to Evaluator Manual section 3-2610, **Investigating Allegations of Abuse.**
2. The investigation findings for each complaint allegation is to be documented on the Complaint Investigation Report. The LIC 9099 has been designed to accommodate one allegation per form. However, the Licensing Program Analyst may document more than one allegation per form provided space is available and the findings are the same for each allegation, i.e. all unfounded, substantiated, inconclusive or needs further investigation. The Licensing Program Analyst cannot document two allegations with different findings; i.e. one allegation that is unfounded and the other substantiated. Also, it is not appropriate to lump all food service or physical plant allegations under one allegation. For example, if the complaint received is for no menus, dirty kitchen and client is being deprived of food in the facility, these allegations must be treated as three separate allegations. (See **Evaluator Manual** section 3-3125, Documentation.)
3. All substantiated and inconclusive complaint allegations are to be retained in the public file. All unfounded complaint allegations **for community care facilities and child care facilities (excluding Residential Care Facilities for the Elderly, and Residential Care Facilities for the Chronically Ill)** are to be retained in the confidential file.
4. If an allegation requires further investigation, the LIC 9099 is to be retained in the confidential file until a resolution is reached. If the allegation is determined to be substantiated or inconclusive, both 9099s will be filed in the public file. If the allegation is unfounded, both 9099s will be filed in the confidential file.
5. For complaints that are “unfounded”, licensing staff shall notify licensees, in writing, within 30 days of the determination that the complaint has been determined unfounded. Licensing staff must use the LIC 9099 to notify the licensee and the notification must include the statement, “This agency has investigated the complaint alleging (indicate the complaint allegation). We have found that the complaint was without a reasonable basis. We have therefore dismissed the complaint.”
6. All documentation of communications between licensing staff and the Legal Division regarding any matter involving the investigation shall be retained in the confidential file. Such documentation is subject to the attorney-client privilege and not to be released to anyone without the Legal Division’s approval.

3-2325 COMPLAINTS INVOLVING FACILITIES THAT ARE NOT OWNER-OCCUPIED (COMMUNITY CARE FACILITIES, RESIDENTIAL CARE FACILITIES FOR THE ELDERLY, RESIDENTIAL CARE FACILITIES FOR THE CHRONICALLY ILL only) 3-2325

These procedures do not apply to Family Child Care Homes, Child Care Centers and all owner-occupied Community Care Facilities, all owner-occupied Residential Care Facilities for the Elderly and all owner-occupied Residential Care Facilities for the Chronically Ill.

When a routine complaint investigation is concluded at the facility visit and a Complaint Report (LIC 9099) is issued, but the licensee is not present, a copy of the report will be sent to the licensee by certified mail within ten calendar days of the visit. The envelope should be marked “personal and confidential.”

If there is no Foster Family Agency representative at a routine Certified Family Home investigation, the analyst may discuss with the Certified Family Home parent the essence of the complaint investigation findings and inform the Certified Family Home parent(s) that the Complaint Report will be given/mailed to the Foster Family Agency and that the licensing office will be working with the Foster Family Agency to correct any deficiencies found. If the Certified Family Home parent has any concerns about the Complaint Report, suggest that the individual contact the Foster Family Agency.

In situations where a complaint allegation of neglect, physical or sexual abuse of a client/resident by the facility administrator or a staff member has been received the following procedures are to be followed:

1. In situations where an initial site visit has been completed in order to meet the ten day mandate and the licensee is present at the time of the visit, the licensee will be informed verbally, in a confidential conversation, of the specific allegation(s), including the name of the alleged suspect.
2. For investigations of Certified Family Homes, the analyst may tell only the broad category of the allegation to the Foster Family Agency licensee or designated representative at the unannounced Foster Family Agency visit and before visiting the Certified Family Home. However, specifics may not be given to the Foster Family Agency before the complaint visit to the Certified Family Home. When documenting the allegation on the LIC 9099 at the time of the visit, it will be sufficient to identify the category of the violation, i.e., personal rights violation(s). It is not necessary to document the specific incident(s) being investigated or the names of the individuals involved.

Use a separate Confidential Names Form (LIC 811) to document the names of alleged victims, and suspects, and any identifying information about individuals in Foster Family Homes or Certified Family Homes. Since further investigation is required, the box “Needs Further Investigation” on the Complaint Report (LIC 9099) should be checked and an estimated date of completion for the investigation provided, such as 30, 45, 60, or 90 days. The investigation should not exceed 90 days.

3-2325 COMPLAINTS INVOLVING FACILITIES THAT ARE NOT OWNER-OCCUPIED (COMMUNITY CARE FACILITIES, RESIDENTIAL CARE FACILITIES FOR THE ELDERLY, RESIDENTIAL CARE FACILITIES FOR THE CHRONICALLY ILL only) **3-2325**
(Continued)

3. If the licensee is not present when an initial site visit is completed, inform the designated facility representative or certified family parent that a complaint allegation of a personal rights violation is under investigation and that further investigation is required in order to resolve the complaint. An estimated date of completion for the investigation will be indicated on the LIC 9099. An LIC 9099 documenting this information will be left at the licensed facility. Within ten calendar days of the facility visit, a second LIC 9099 will be sent to the licensee by certified mail.
4. If the licensee's address is also the facility's address, the envelope should be addressed to the licensee and marked "personal and confidential". This report will inform the licensee that an investigation alleging neglect, physical or sexual abuse of a client/resident is being conducted and that the investigation should be completed within a specified time frame, such as 30, 45, 60, or 90 days. The investigation should not exceed 90 days. The names of the alleged victims and suspects will be documented on the LIC 811 and sent to the licensee with the complaint report.
5. If the licensee is a Foster Family Agency, include an LIC 811 documented with the names of the alleged victims, suspects, and any identifying information regarding Foster Family Homes or Certified Family Homes used by the Foster Family Agency.

There are four exceptions to these revised notification procedures:

- A. Situations where the licensee or a relative of the licensee is the suspected perpetrator.
- B. Situations where the licensee is a corporation and the Chief Executive Officer or a member of the board is the suspected perpetrator.
- C. The **Regional Manager** has decided that there would be significant risk to the facility clients if the exact nature of the allegations were disclosed.
- D. The ten-day visit has been delayed due to a request by the law enforcement agency conducting a criminal investigation.

If the Regional Manager decides to delay the ten day visit under the provisions of Evaluator Manual section 3-2610, the requirement for written notification to the licensee of the specific nature of the allegation(s) as noted above is to be followed within ten calendar days of the date the complaint is received, unless the conditions of any above exceptions apply.

**3-2330 SPECIAL DOCUMENTATION REQUIREMENTS FOR
COMMUNITY CARE FACILITIES****3-2330**

The following required notices and documentation procedures do not pertain to **Foster Family Homes, Adult Day Programs**, Residential Care Facilities for the Elderly, Residential Care Facilities for the Chronically Ill, or Child Care **facilities**.

The LIC 9099 must also include a notice to the Community Care Facility **licensee** to send, **by certified mail to authorized representatives of all facility clients**, copies of reports substantiating **the following** complaints, **as required by** Health and Safety Code Sections 1538.5(b)(1) and (2). These circumstances include:

1. **For any** substantiated complaint relating to client physical or sexual abuse (the reports must be sent within three days of receiving the citation); or
2. **For any case in which a facility has received three, or more, substantiated complaints relating to the same violation (i.e. same regulation section) during the past 12 months, the report must be sent within days of receiving the third citation. This requirement does not apply to Certified Family Homes of a Foster Family Agency unless the substantiated complaints involve the same Certified Family Home. If a Regional Office notices the same substantiated complaints in several Certified Family Homes associated with the same Foster Family Agency, the Regional Office may treat that as a Foster Family Agency case management issue. In addition, the Regional Office may contact other Regional Offices with Certified Family Homes associated with the same Foster Family Agency to develop joint case management visits.**

The LIC 9099 must also advise the Community Care Facility operator of (1) the requirement to retain certified mail receipts for one year as written proof that the reports were sent; and (2) that failure to comply with the above is subject to civil penalties.

1. Cite Health and Safety Code Sections 1538.5(b)(1) or (2) when the licensee fails to send a copy of the LIC 9099 to the clients' authorized representatives;
2. Cite Health and Safety Code Section 1538.5(c) when the licensee fails to retain, for one year, written proof that the LIC 9099 was sent to the clients' representatives.

The authorized representatives specified in Health and Safety Code Section 1538.5(a) are:

- a. Parents
- b. Legal guardians
- c. Conservators
- d. Clients' rights advocates
- e. Placement agencies
3. **An appeal of the citation does not affect the licensee's obligation to send the reports. However, the licensee may provide subsequent notice to the authorized representatives if the appeal is favorable.**

**3-2331 SAMPLE LANGUAGE FOR COMPLAINTS FOR
COMMUNITY CARE FACILITIES ONLY****3-2331**

The following sample language does not apply to Residential Care Facilities for the Elderly, Residential Care Facilities for the Chronically Ill or Child Care licensees.

The information listed below should be entered on the LIC 9099 as appropriate:

Sample A:

The following language will be used when the complaint investigation substantiates acts of physical or sexual abuse against clients:

(NAME(S) OF LICENSEE(S)) was informed that a complaint regarding client abuse was substantiated. (Complete the paragraph with information regarding the detail of the violation.)

“Pursuant to Health and Safety Code Section 1538.5(b)(1), within three days from the date of this report, the licensee must send by certified mail, copies of this Complaint Investigation Report (LIC 9099) to each client’s authorized representative. The licensee was informed that written proof (e.g., certified mail receipt) must be retained by the licensee at the facility for future review by the licensing agency.”

Sample B:

The following language will be used when three complaints for the same type of violations have been substantiated:

(NAME(S) OF LICENSEE(S)) was informed that three complaints for violations of _____ have been substantiated against the (NAME OF FACILITY). (Complete the paragraph with information regarding the detail of the violation.)

Pursuant to Health and Safety Code Section 1538.5(b)(2), by the date (ENTER DATE) agreed upon (between licensee and the licensing analyst), the licensee must send, by certified mail, copies of the Complaint Investigation Report (LIC 9099) to each client’s authorized representative. The licensee was informed that written proof (e.g., certified mail receipt) must be retained by the licensee at the facility for future review by the licensing agency.

Sample C:

The following language will be used when the licensee has failed to meet the obligation of sending a notice of substantiated complaints.

(NAME(S) OF LICENSEE(S)) has violated Health and Safety Code Section 1538.5(b)() [ENTER (1) or (2)] because he/she has failed to send notifications of substantiated complaints, by certified mail, for violation of (NATURE OF VIOLATION) to each client’s authorized representative, by the specified date (ENTER DATE).

**3-2331 SAMPLE LANGUAGE FOR COMPLAINTS FOR
COMMUNITY CARE FACILITIES ONLY (Continued)****3-2331**

(NAME(S) OF LICENSEE(S)) shall correct this deficiency by sending the notification of substantiated complaints by (ENTER DATE). If the deficiency is not corrected by (ENTER DATE), the Department will initiate civil penalty action against the licensee in accordance with Title 22, California Code of Regulations Section 80054.

3-2340 EXIT INTERVIEW**3-2340**

The purpose of the exit interview is to ensure that the licensee/administrator clearly understands the outcome of the investigation and what, if anything, is expected of him/her. When there is reasonable doubt and a need for further investigation, the analyst should explain that further evaluation and possible follow-up visits are necessary before making a decision regarding resolution of the complaint allegation(s). Remember, it is always better to take the time to gather all the required evidence/facts necessary to make a determination as opposed to reaching a resolution prematurely. In this case, the analyst will check the box on the LIC 9099, "Needs Further Investigation" and indicate an estimated time of completion, such as 30, 45, 60, or 90 days. The investigation should not exceed 90 days.

Before exiting a Certified Family Home, let the Certified Family Home parent(s) know that you will be reporting your findings to the Foster Family Agency and that the Certified Family Home parent(s) may contact the Foster Family Agency with any concerns or questions about the investigation.

When it has been established that the allegations are unfounded, the analyst should explain this to the licensee and document such on the LIC 9099. With the exception of unfounded complaints, the licensee may use space on the LIC 9099 to document his/her statement regarding the allegations as part of the public record. The licensee may also send a letter at a later date.

At a minimum, each deficiency should be discussed with the licensee/administrator and the analyst should obtain a specific Plan of Correction and due date. The Plan of Correction must be written on the LIC 9099 by the licensee/administrator. If the licensee refuses to write the Plan of Correction or is unable to, then the analyst should write it and document the reason it was completed by the analyst instead of the licensee.

At this time the analyst should advise the licensee/administrator that he/she may find it necessary to request an extension of the Plan of Correction due date. This is done by contacting the Local Unit Manager (whose name appears on the LIC 9099) by telephone, FAX or in writing before the original Plan of Correction due date.

If the licensee/administrator disagrees with any application of regulation, the notice of deficiencies, the required Plan of Correction due date or any other finding of consequence related to this visit, he/she should be invited to write these disagreements on the LIC 9099 in the space provided for the Plan of Correction. The analyst should suggest that the individual read the paragraph entitled "Appeal Rights" on the back of the LIC 9099 or the analyst may use the opportunity to read and explain these rights. The licensee/operator should be advised further to include a written argument to support their side of the disagreement and submit any other supporting evidence.

3-2400 CLEARING THE COMPLAINT**3-2400**

After the investigation is completed, the analyst must indicate the resolution code for each allegation on the front of the LIC 802 and complete the remaining sections on the reverse side.

After completing and signing the LIC 802, the analyst should attach it to the top of the facility file with the LIC 9099 and submit it to the Local Unit Manager for approval. Once the Local Unit Manager signs-off, the LIC 802 and accompanying file is routed to the clerk for clearing the Complaint Control Log (LIC 957) and is then filed in the Confidential Section of the facility file. The LIC 9099 should be filed in the public file, except for unfounded allegations for any Community Care Facilities (excluding Adult Day Care, Residential Care Facilities for the Elderly and Residential Care Facilities for the Chronically Ill) or any Child Care Facilities, which are to be retained in the confidential file.

3-2600 COMPLAINTS ALLEGING ABUSE**3-2600**

Complaints alleging priority I or II situations involving children, clients, or residents are considered top priority and are to be handled expeditiously. The steps involved in abuse investigations differ from routine complaint investigations and should be carefully planned with the assistance of the supervisor.

The procedures in Evaluator Manual, [Reference Material](#) Sections 3-2602 through 3-2650, below, are to be used by all county licensing staff and Regional Offices. Regional Office staff must refer all allegations of serious abuse or suspicious deaths to Program Investigations, as outlined in Evaluator Manual section 1-0620, Investigative Priorities. The referral procedures are to be followed prior to beginning the complaint investigation.

In addition, because they are Department licensing employees, analysts must comply with the requirements to report suspected abuse of children, dependent adults and elders. (Refer to the Licensing Unit Manager Guidebook for general directions on Evaluators role as Mandated Reporters. Refer to Evaluator, Reference Material Section 4-0000, Abuse Reporting Requirements, for Child Care cases. See form PS 314 for thorough instruction, and procedure, regarding who must report abuse of dependent adults and elders.)

3-2600.1 DEFINITION OF CHILD ABUSE**3-2600.1**

Child abuse means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or severe neglect, or unlawful corporal punishment or injury, or willful cruelty or unjustifiable punishment (including mental suffering) of a child. [Child abuse also includes the definitions set forth in Penal Code Sections 11165.1 through 11165.6]. The definition of child abuse includes but is not limited to the following:

- ♦ A **physical injury** which is inflicted by other than accidental means on a child by another person. [See Penal Code Section 11165.6]
- ♦ **Sexual abuse** means sexual assault, sexual exploitation or sexual molestation of a child including, but not limited to,:
 - Rape, sodomy, oral copulation, or penetration of a genital or anal opening by a penis or foreign object. [See Penal Code Section 11165.1]

3-2600.1 DEFINITION OF CHILD ABUSE (Continued)**3-2600.1**

- The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them where such touching cannot be reasonably construed to be normal caretaker responsibilities. [See Penal Code Section 11165.1]
- ♦ **Intentional neglect** including, but not limited to, the following:
 - The negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition. [See Penal Code Section 11165.2]
 - The intentional failure to provide food, clothing, shelter, medical care or supervision even if no physical injury has occurred. [See Penal Code Section 11165.2]
- ♦ Willfully causing or permitting **infliction of unjustifiable physical pain or mental suffering**. [See Penal Code Section 11165.3]

NOTE: It is important to note that even though no visible physical injury can be observed, child abuse may still be present where the person willfully causes or permits the child to be exposed to conduct which results in mental suffering to the child.

Example: The licensee places the child in a pen full of snakes and tells her that if she does not stop crying the snakes will bite her. The snakes in fact are non-poisonous. The child suffers emotional and mental suffering from the experience.

- ♦ The willful infliction of any **cruel or inhuman corporal punishment** or injury resulting in a traumatic condition. [See Penal Code Section 11165.4]

NOTE: Administering corporal punishment to children in care is prohibited in Community Care Licensing facilities. Pursuant to Health and Safety Code Section 1531.5, foster parents may administer corporal punishment not constituting child abuse to their own children. Thus, while corporal punishment may not meet the definition of child abuse, it is still a violation of the child's personal rights if administered upon a child in care.

3-2600.2 DEFINITION OF DEPENDENT ADULT ABUSE**3-2600.2**

Dependent adult means any person residing in California, between the ages of 18 and 64, who has physical or mental limitations which restrict his/her ability to carry out normal activities or to protect his/her rights including, but not limited, to persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. [Welfare & Institutions Code Section 115610.23; Penal Code Section 368(h)]

Abuse of an dependent adult means either of the following:

- ♦ **physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or**
- ♦ **the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.** [Welfare and Institutions Code Section 115610.07]

Care custodian includes persons providing care or services for dependent adults or an administrator or an employee of any California Department of Social Services licensed facility, including support and maintenance staff. [Welfare and Institutions Code Sections 15610.17(e)&(j)]

- ♦ **Physical abuse** means any of the following:
 - **assault** (an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another) or assault with a deadly weapon, as defined in Penal Code Section 240;
 - **battery** (willful and unlawful use of force or violence upon the person of another), as defined in Penal Code Section 242;
 - **unreasonable physical constraint, or prolonged or continual deprivation of food or water;**
 - **sexual assault** as defined in Penal Code Sections 243.4, 261, 264.1, 262, 285, 286, 288a, or 289;
 - **use of a physical or chemical restraint or psychotropic medication**
 - **for punishment, or**
 - **for a period beyond that for which the medication was ordered, or**
 - **for any purpose not authorized by the physician and surgeon.**

[Welfare and Institutions Code Section 11510.63]
- ♦ **Neglect means either**
 - the negligent failure of any person having the care or custody of a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise; or
 - the negligent failure of the person him/herself to exercise that degree of care that a reasonable person in a like position would exercise.

[Welfare and Institutions Code Section 15610.57(a)]

3-2600.2 DEFINITION OF DEPENDENT ADULT ABUSE (Continued)**3-2600.2**

- ◆ **Neglect includes**, but is not limited to, all of the following:
 - failure to assist in personal hygiene, or in the provision of food, clothing, or shelter;
 - failure to provide medical care for physical and mental health needs (unless the sole reason is voluntarily relying on treatment by spiritual means through prayer alone in lieu of medical treatment);
 - failure to protect from health and safety hazards; or
 - failure to prevent malnutrition or dehydration.
[Welfare and Institutions Code Section 15610.57(b)]
- ◆ **Financial abuse** occurs when a person or entity does any of the following:
 - takes, secretes, appropriates, or retains real or personal property of a dependent adult **for** a wrongful use or with intent to defraud, or both; or
 - assists in taking, secreting, appropriating, or retaining real or personal property of a dependent adult **for** a wrongful use or with intent to defraud, or both.[Welfare and Institutions Code Section 15610.30(a)]

A person or entity shall be deemed to committed these acts if done so in bad faith, and shall be deemed to have acted in bad faith if the person or entity knew or should have known that the dependent adult had the right to have the property transferred or made readily available to the dependent adult or to his or her representative. A person or entity should have known of a right if, on the basis of the information received by the person or entity or the person or entity's authorized third party, or both, it is obvious to a reasonable person that the dependent person has that right. [Welfare and Institutions Code Section 15610.30(b)]

Representative in this section means a person or entity that is either

 - a conservator, trustee, or other representative of the estate of a dependent adult, or
 - an attorney-in-fact of a dependent adult who acts within the authority of the power of attorney. [Welfare and Institutions Code Section 15610.30(c)]
- ◆ **Abandonment** means the desertion or willful forsaking of a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody. [Welfare and Institutions Code Section 15610.05]
- ◆ **Isolation** means any of the following:
 - acts intentionally committed for the purpose of preventing, and that do serve to prevent, a dependent adult from receiving his or her mail or telephone calls;
 - telling a caller or prospective visitor that a dependent adult is not present or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the dependent adult from meeting with visitors; [Welfare and Institutions Code Section 15610.43(a)]

3-2600.2 DEFINITION OF DEPENDENT ADULT ABUSE (Continued)**3-2600.2**

These acts are subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to instruction of a physician and surgeon, who is caring for the dependent adult.)

- ◆ **Goods and services necessary to avoid physical harm or mental suffering** include, but are not limited to, all of the following:
 - the provision of medical care for physical and mental health needs;
 - assistance in personal hygiene;
 - adequate clothing;
 - adequately heated and ventilated shelter;
 - protection from health and safety hazards;
 - protection from malnutrition and deprivation of necessities or physical punishment; or
 - transportation and assistance necessary to secure any of the above needs.[Welfare and Institutions Code Section 15610.35]

3-2600.3 DEFINITION OF ELDER ABUSE**3-2600.3**

Elder means any person residing in California, 65 years of age or older. [Welfare & Institutions Code Section 15610.27; Penal Code Section 368(g)] Note: Inasmuch as Residential Care Facilities for the Elderly are for persons 60 years of age or older under Health and Safety Code Section 1569.2(k), residents under 65 years old may be subject to the same abuse laws, if defined as a dependent adult. This means an adult under 65 who has physical or mental limitations which restrict his/her ability to carry out normal activities or to protect his/her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. [Welfare and Institutions Code Section 15610.23; Penal Code Section 368(h)]

Abuse of an elder means either of the following:

- ◆ **physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or**
- ◆ **the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.** [Welfare and Institutions Code Section 15610.07]

Care custodian includes an administrator or an employee of any California Department of Social Services licensed facility, or persons providing care or services for elders, including support and maintenance staff. [Welfare and Institutions Code Section 15610.17(e)&(j)]

- ◆ **Physical abuse** means any of the following:
 - **assault** (an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another) or assault with a deadly weapon, as defined in Penal Code Section 240;
 - **battery** (willful and unlawful use of force or violence upon the person of another), as defined in Penal Code Section 242;

3-2600.3 DEFINITION OF ELDER ABUSE (Continued)**3-2600.3**

- unreasonable physical constraint, or prolonged or continual deprivation of food or water;
- sexual assault as defined in Penal Code Sections 243.4, 261, 264.1, 262, 285, 286, 288a, or 289;
- use of a physical or chemical restraint or psychotropic medication
 - for punishment, or
 - for a period beyond that for which the medication was ordered, or
 - for any purpose not authorized by the physician and surgeon. [Welfare and Institutions Code Section 11510.63]

◆ Neglect means either

- the negligent failure of any person having the care or custody of an elder to exercise that degree of care that a reasonable person in a like position would exercise; or
- the negligent failure of the person him/herself to exercise that degree of care that a reasonable person in a like position would exercise. [Welfare and Institutions Code Section 15610.57(a)]

◆ Neglect includes, but is not limited to, all of the following:

- failure to assist in personal hygiene, or in the provision of food, clothing, or shelter;
- failure to provide medical care for physical and mental health needs (unless the sole reason is voluntarily relying on treatment by spiritual means through prayer alone in lieu of medical treatment);
- failure to protect from health and safety hazards; or
- failure to prevent malnutrition or dehydration. [Welfare and Institutions Code Section 15610.57(b)]

◆ Financial abuse occurs when a person or entity does any of the following:

- takes, secretes, appropriates, or retains real or personal property of an elder for a wrongful use or with intent to defraud, or both; or
- assists in taking, secreting, appropriating, or retaining real or personal property of an elder for a wrongful use or with intent to defraud, or both. [Welfare and Institutions Code Section 15610.30(a)]

A person or entity shall be deemed to have committed these acts if done so in bad faith, and shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder had the right to have the property transferred or made readily available to the elder or to his or her representative. A person or entity should have known of a right if, on the basis of the information received by the person or entity or the person or entity's authorized third party, or both, it is obvious to a reasonable person that the elder person has that right. [Welfare and Institutions Code Section 15610.30(b)]

Representative in this section means a person or entity that is either a conservator, trustee, or other representative of the estate of an elder, or an attorney-in-fact of an elder who acts within the authority of the power of attorney. [Welfare and Institutions Code Section 15610.30(c)]

3-2600.3 DEFINITION OF ELDER ABUSE (Continued)**3-2600.3**

- ◆ **Abandonment** means the desertion or willful forsaking of an elder by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody. [Welfare and Institutions Code Section 15610.05]
- ◆ **Isolation** means any of the following:
 - acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder from receiving his or her mail or telephone calls;
 - telling a caller or prospective visitor that an elder is not present or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder, whether he or she is competent or not, and is made for the purpose of preventing the elder from having contact with family, friends, or concerned persons; or
 - **false imprisonment** (the unlawful violation of the personal liberty of another) as defined in Penal Code Section 236; or physical restraint for the purpose of preventing the elder from meeting with visitors. [Welfare and Institutions Code Section 15610.43(a)]

These acts are subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to instruction of a physician and surgeon, who is caring for the elder at the time and gives the instructions as part of his or her medical care. [Welfare and Institutions Code Section 15610.43(b)]

These acts shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety. [Welfare and Institutions Code Section 15610.43(c)]
- ◆ **Abduction** means the removal from California and the restraint from returning, of any elder who does not have the capacity to consent to the removal or restraint. [Welfare and Institutions Code Section 15610.06]
- ◆ **Mental suffering** means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder. [Welfare and Institutions Code Section 15610.53]

3-2600.3 DEFINITION OF ELDER ABUSE (Continued)**3-2600.3**

- ◆ **Goods and services necessary to avoid physical harm or mental suffering** include, but are not limited to, all of the following:
 - the provision of medical care for physical and mental health needs;
 - assistance in personal hygiene;
 - adequate clothing;
 - adequately heated and ventilated shelter;
 - protection from health and safety hazards;
 - protection from malnutrition and deprivation of necessities or physical punishment; or
 - transportation and assistance necessary to secure any of the above needs. [Welfare and Institutions Code Section 15610.35]

3-2602 DELAYING THE TEN-DAY COMPLAINT VISIT**3-2602**

If a law enforcement officer (police or sheriff) is, or will be, conducting a criminal investigation of the abuse allegation, it is important that the analyst coordinate any investigative plans or activities in order to avoid jeopardizing the criminal investigation.

If the facility is being investigated by law enforcement and it is requested that the licensing agency postpone the required ten day on-site complaint visit until their investigation is complete, the **Regional** Manager or County Licensing Supervisor has the authority to make the decision to delay the visit. The **Regional** Manager or County Licensing Supervisor must be certain that one of the following situations exists:

1. The licensing agency determines the visit would adversely affect the **law enforcement** investigation and/or endanger the health and safety of the children and clients.
2. Victims and/or witnesses are still in care and would be in danger of physical/mental abuse, or intimidation; or
3. A visit would increase the possibility of the evidence being destroyed.

3-2603 PROGRAM INVESTIGATIONS REFERRAL**3-2603**

Referring a case to **Program Investigations** is not a valid reason, in and of itself, for delaying the complaint visit. If a case has been referred to and accepted by **Program Investigations**, the required ten-day visit must still be made. It is important to communicate with the **Program Investigations** Investigator in order to coordinate the areas of responsibility regarding the complaint and determine who will make the ten-day visit. However, if **Program Investigations** cannot make this visit within the required ten calendar days, the Regional Office is ultimately responsible for making the visit, or determining that the case meets the criteria for postponement. Regardless of who assumes responsibility for the case, the ten-day complaint visit may only be postponed when authorized by the **Regional Manager**, using the criteria in Evaluator Manual section 3-2602, **Delaying the Ten-Day Complaint Visit**.

When **Program Investigations** completes its investigation, a final report will be submitted to the Regional Office for review. If a citation is warranted, the **Regional Office** must cite the licensee for violations within ten (10) days of receipt of a **Program Investigations** report, unless there is a specific reason to delay the citation.

3-2604 REGIONAL AND COUNTY LICENSING OFFICE PROCEDURES**3-2604**

Once it has been determined that a delay in making the ten-day on-site visit is necessary due to the conditions in **Evaluator Manual** section 3-2602, **Delaying the Ten-Day Complaint Visit**, document the reasons for the delay on a LIC 812 and attach to the LIC 802. Include the following information:

1. Reason the delay was requested;
2. Agency and contact person(s) requesting the delay;
3. **Regional** Manager/County Licensing Supervisor approval.

Subsequent to approving a delay, the **Regional** Manager or County Licensing Supervisor is responsible for monitoring the ongoing investigation and ensuring the licensing agency's timely follow-up and resolution of the complaint. The investigation must still be initiated within ten days regardless of the fact that the site visit has been delayed.

3-2605 ASSISTING OTHER INVESTIGATORY AGENCIES**3-2605**

Even though the ten-day on-site complaint visit has been delayed, a law enforcement agency may request that an analyst visit the facility or Certified Family Home in order to obtain information that will assist them with their investigation, e.g., names, addresses and phone numbers of all children **or** clients and their parents or representatives. During this visit, it is not necessary to divulge the nature of the allegation(s) to the licensee, designated representative or certified family parent if such information could place the child or client's well-being in jeopardy. Refer to the language used in **Evaluator Manual** section 3-2610, **Investigating Allegations of Abuse**.

3-2605 ASSISTING OTHER INVESTIGATORY AGENCIES (Continued) 3-2605

This policy differs from the standard practice of explaining the purpose of the visit and the substance of the complaint during the entrance interview. Refer to Evaluator Manual section 3-2305, Entrance Interview. Whenever the allegations cannot be fully disclosed at the time of the visit, the analyst must inform the licensee that this information will be presented during a return visit. Refer to Evaluator Manual section 3-2640, Informing the Licensee of Complaint, for exceptions to the return visit.

3-2610 INVESTIGATING ALLEGATIONS OF ABUSE 3-2610

If no other agency is investigating the abuse incident, it becomes incumbent upon the licensing agency to initiate a course of action. Procedures for investigating cases of abuse differ somewhat from the routine complaint investigation process. These differences, which are identified below, are critical and must be agreed upon by the Local Unit Manager:

1. Invoking the criteria for delaying the visit, **unless the Regional Manager has determined that there would be significant risk to the clients if the exact nature of the allegations were disclosed;**
2. Interviewing witnesses and victims prior to visiting the facility or Certified Family Home;
3. Obtaining declarations from witnesses and victims;
4. Withholding full disclosure of the substance of the complaint from the licensee or Certified Family Home parent(s) except for certain facility categories;
5. Deciding how the licensee will be informed of the investigative results.

Once the complaint has been assigned, the analyst should contact the complainant to obtain all the pertinent facts and details surrounding the allegation. If it appears the complainant has detailed knowledge of the allegations, an appointment should be made to discuss the complaint and obtain a declaration. During this initial contact it is important to obtain from the complainant the names, addresses and telephone numbers of any other witnesses.

Witnesses and victims should be interviewed in person and away from the facility premises when possible. These interviews should ideally take place prior to the analyst's first facility/Certified Family Home site visit. Because of the sensitivity of abuse investigations, a gender-appropriate co-worker should normally accompany the lead analyst to witness or conduct the interviews.

Unless prior approval has been obtained from the Deputy Director through the Program Administrator or Regional Manager or County Licensing Supervisor, do not use video tape equipment to record the interview and/or the evidence.

3-2610 INVESTIGATING ALLEGATIONS OF ABUSE (Continued)**3-2610**

Photographs, however, are permitted unless the child or client objects. While use of audio equipment is not prohibited, it shall be used only with approval from the Regional Manager or County Licensing Supervisor. This will ensure that any legal technicalities will not be overlooked when recording the statements and interviews. For example, Penal Code Section 632 makes it a crime to record a confidential communication without the consent of all parties to the communication, by means of any electronic amplifying or recording device. This is the case whether the conversation is carried on face to face or over the telephone.

In priority I and II situations to interview day care children, it is best to telephone the parents and set up an interview time and place that is convenient for them. When contacting the parents it is important not to alarm them or discuss too many details over the telephone. The analyst must properly identify him/herself and indicate he/she is conducting a complaint investigation against the day care facility where their child is enrolled and would like to talk to them in person as well as interview their child. The analyst should always obtain the parent's cooperation and permission before interviewing the child. If parents object to the interview, honor this objection. This does not mean that the complaint investigation stops. Continue the investigation. Interview other victims and witnesses. If appropriate cross refer the case to other agencies, such as Children's/Adult Protective Services, and/or the appropriate law enforcement agency. (See Evaluator Manual sections 3-2645, Notifying Resource and Referral Agencies, and 2650, Notifying the Local Long-Term Care Ombudsman.) If a parent denies permission to interview a child, immediately consult your Local Unit Manager. Also, consult with the Department's Legal Division and/or Program Investigations Unit for advice and guidance on how to handle situations where permission to interview a child is denied by the parent(s).

If the victim and/or witnesses can only be interviewed at the facility or Certified Family Home, the interview shall take place in a private room away from the general activity of the facility staff, Certified Family Home parent(s), other children and clients. When interviewing the victim, refrain from asking questions that might easily upset or traumatize him/her.

The presence of a gender-appropriate co-worker/witness may be of some comfort to the victim, particularly if portions of the victim's body must be viewed. If clothing is covering the injuries on the victim's arms or legs, the victim's permission must be obtained before viewing the injury and, if the victim is able, he/she can roll up the sleeves or pant leg to display the injury. If the victim cannot remove the clothing, the gender-appropriate co-worker may assist. If the injuries are located on parts of the body normally covered by clothing (in keeping with conventional propriety) they may, with one exception, be viewed only to the extent that the victim feels comfortable and only with his/her consent or that of his/her parents or conservator authorized representative who must be present. This discretion does not apply to viewing those personal parts of the body traditionally covered by underwear/swimwear; thus, the analyst may not ever request to see injuries to the victim's genital areas or other parts of the body regarded as private.

Even if the victim is willing, the analyst may not request or allow the victim to completely disrobe. Never remove, nor ask the victim to remove, any bandages or dressings.

If the injuries, bruises or other identifiable marks are visible on parts of the body that are generally not covered (e.g., face, arms, hands, legs), a photograph of such evidence is permissible. Never take a picture if the victim objects. The victim's well-being takes precedence over data collection.

3-2610 INVESTIGATING ALLEGATIONS OF ABUSE (Continued)**3-2610**

Because some interviews of witnesses and/or victims will have to be conducted at the facility or Certified Family Home, the analyst should consult with a **Local Unit Manager**, prior to making the visit about the amount and type of information to divulge to the facility operator or Certified Family Home parent(s). Policy guidelines are as follows:

With the exception of complaints involving specific facilities referenced in Evaluator Manual section 3-2325, Complaints Involving Facilities That Are Not Owner-Occupied, when investigating cases alleging physical abuse, sexual assault or suspicious deaths, the analyst shall not be required to convey the specific details of the complaint. However, it is necessary that the purpose of the visit be explained sufficiently so that the licensee is not deceived or deliberately misled. Examples are as follows:

Correct “I am conducting a complaint investigation involving a personal rights violation and have not completed the investigation in order to discuss the details at this time. You will be advised of the allegations and my findings within approximately ___ days.”

Incorrect “I am only conducting a case management visit.”

Visits in response to complaint allegations are always made without advance notice to the licensee/operator, thus they are unannounced. When investigating the Certified Family Home of a remote Foster Family Agency, the analyst may contact the licensee for an appointment, but must not reveal the substance of the complaint before that appointment.

When the interviews have been completed, the analyst may have gathered sufficient data to feel comfortable about informing the licensee of the findings; particularly if it is undoubtedly clear that the alleged abuse never occurred. In most cases, however, the analysis will require additional time and input; thus the analyst may not want to discuss his/her findings with the licensee or facility operator at this time.

When all data and documents have been collected, the analyst usually confers with a **Local Unit Manager** for guidance in presenting the findings and proposed course(s) of action to the licensee. Refer to Evaluator Manual sections 3-2305, Review of the Facility; 3-2325, Complaint Involving Facilities that Are Not Owner-Occupied; 3-2340, Exit Interview; 3-2635, Special Requirements for Investigations of Abuse or Neglect in Residential Facilities; 3-2640, Informing the Licensee of Complaint, and 1-0000, Enforcement Actions.

3-2615 DEFINITION AND SOURCES OF EVIDENCE**3-2615****Definition of Evidence**

Evidence means testimony, writings, material objects, or other things presented to the senses that may prove the existence or nonexistence of a fact.

3-2615 DEFINITION AND SOURCES OF EVIDENCE (Continued)**3-2615****Classification of Evidence**

Evidence can be direct, circumstantial, or hearsay.

- **Direct Evidence** – Means evidence that directly proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes the fact.

NOTE: The direct evidence of one witness, if credible, is sufficient for proof of any fact.

- **Circumstantial Evidence** – Means indirect evidence that paints a picture around an event which leads to the logical inference or conclusion that the event occurred.

NOTE: The courts have upheld findings of abuse on the basis of circumstantial evidence alone.

- **Hearsay Evidence** – Is an out of court statement made by someone other than the witness testifying at the hearing and offered to prove the truth of the matter asserted. Unless a specific exception applies, hearsay evidence is not admissible to prove the truth of the matter asserted.

NOTE: Is it something the witness saw with their eyes or is it something the witness heard another person say? If it is an event that the witness perceives with his or her own senses, then it is not hearsay. If it is something that the witness heard another person say about an event, then it is hearsay.

Significance of Hearsay Evidence: The importance of knowing whether or not evidence is hearsay lies in the fact that hearsay is not admissible to support a finding of fact unless a specific exception exists to allow its admission. If hearsay evidence is admissible over objection because a specific exception applies, then a finding can be based on the hearsay evidence. If there is no specific exception, then a finding cannot be based on the hearsay evidence alone, i.e. some other direct or circumstantial evidence must be present.

NOTE: There are many exceptions to the hearsay rule that allow the admission of hearsay evidence. In addition, in administrative hearings (unlike civil court proceedings), any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in conducting serious affairs, regardless of whether the evidence would otherwise be excluded in civil court proceedings (i.e. lack of an exception to the hearsay rule). This type of evidence is also known as “administrative hearsay” and may be used for the purpose of supplementing or explaining other admissible evidence, but may not, if objected to, be used to support a finding unless an exception to the hearsay rule exists.

If you are not sure as to the effect hearsay evidence may have on your determination as to whether a complaint is unfounded, inconclusive or substantiated, you should inform your supervisor about the need to consult with the consulting attorney assigned to your office.

3-2615 DEFINITION AND SOURCES OF EVIDENCE (Continued)**3-2615****Sources of Evidence**

- Statement of eye witnesses – including yourself
- Statement of other witnesses – including conservators, caretakers, siblings; relatives; first responders (police, paramedics); neighbors; medical professionals (emergency room staff, medical examiners, family doctor, clinic staff); agency professionals (CPS/Adult Protective Services workers, police, ombudsmen); facility residents, former staff of facility.
- Hospital and medical records.
- Police reports
- Court documents. **Note:** Obtain original certified copy.
- Abuse reports (cannot be introduced into evidence, but information such as observations or certain statements, is a source of evidence).
- Resident records
- Facility records (i.e. medication logs, log books, work schedules, etc.)
- Facility staff records
- Photographs
- Declarations
- Incident Reports
- Paramedic reports
- Death certificates
- Autopsy reports
- Fire Inspector reports
- Building and Code Enforcement records
- Ombudsman's **Reports**

LICENSING FILE INFORMATION

- Licenses
- Licensing Reports – LIC 809
- Complaints – LIC 802
- **Complaint Investigation Reports – LIC 9099**
- Detail Support Information – LIC 812
- Confidential Names Lists – LIC 811
- Staff Lists
- Child/client/resident rosters
- Other documents
- Letters

3-2615.1 EXAMPLES IN CHILD ABUSE CASE**3-2615.1**

A child told a social worker that she was sexually assaulted by her foster parent. The social worker tells police about the assault. The issue or matter asserted at hearing is whether the child was sexually assaulted.

1. Social worker testifies about the assault = hearsay.
2. Police officer testifies that the social worker told him about the assault = hearsay on hearsay (double hearsay).
3. Child testifies about the assault = not hearsay.
4. Medical evidence in the form of testimony from doctors = not hearsay.
5. Opinion of therapist or other expert = not hearsay.

3-2615.2 EXAMPLES IN DEPENDENT ADULT ABUSE CASE**3-2615.2**

A hospital social worker reports neglect of an adult admitted from an Adult Residential Facility. The social worker tells police about the neglect. The issue or matter asserted at hearing is whether the adult was neglected.

1. Social worker testifies about the neglect = hearsay.
2. Police officer testifies that the social worker told him about the neglect = hearsay on hearsay (double hearsay).
3. Adult testifies about the neglect = not hearsay.
4. Medical evidence in the form of testimony from doctors = not hearsay.
5. Opinion of other expert = not hearsay.

3-2615.3 EXAMPLES IN ELDER ABUSE CASE**3-2615.3**

A hospital social worker reports neglect of an elder admitted from a Residential Care Facilities for the Elderly. The social worker tells police about the neglect. The issue or matter asserted at hearing is whether the elder was neglected.

1. Social worker testifies about the neglect = hearsay.
2. Police officer testifies that the social worker told him about the neglect = hearsay on hearsay (double hearsay).
3. Elder testifies about the neglect = not hearsay.
4. Medical evidence in the form of testimony from doctors = not hearsay.
5. Opinion of other expert = not hearsay.

3-2620 GUIDELINES FOR CONDUCTING INTERVIEWS IN ABUSE CASES**3-2620****General Guidelines**

An interview is a meeting at which information is obtained from a person, and usually involves two people engaged in a conversation. Interviewing should be non-accusatory in design and nature. The following are general guidelines:

- Determine the purpose of the interview and role of the person to be interviewed (i.e. victim, eye witness, expert, suspect, licensee).
- Plan and prepare for the interview carefully.
- Determine the functional and developmental level of the person to be interviewed.
- Review the existing evidence.
- Interview witnesses separately; one on one is best.
- Get information from the witness, do not give information.
- First take the time to establish rapport with the witness. Use open-ended questions that require a narrative response and will give an overview, i.e. "Can you tell me what happened?" Use direct questions to obtain details not given in the narrative answers.
- Ask the witness what happened and why they think that.
- Ask the witness about anything that was not asked of them that the witness thinks you should know.
- Obtain good contact information for the witness for future use.
- Document the interview, your questions, the witness's response, and when appropriate, your responses.

3-2620 GUIDELINES FOR CONDUCTING INTERVIEWS IN ABUSE CASES (Continued)**3-2620****The following should be *avoided* when interviewing :**

- Do not interview the witness in the presence of anyone who may influence the interview one way or another. This includes other potential victims.
- Do not touch the victim and do not invade his/her space.
- Do not begin the sensitive part of the interview unless you are reasonably sure you are able to communicate and have developed rapport with the witness.
- Take breaks and do not interview the witness for a period of time longer than his/her attention span.
- Do not rush the interview to get finished.
- Do not ask leading and suggestive questions unless and until you have exhausted all other options. Remember, if leading and/or suggestive questioning is used, you may not be able to rely on the information obtained. Assess information received from leading and/or suggestive questioning with evidence that corroborates or contradicts the information obtained.
- Avoid repeating the same question without an explanation as to why you are doing so. Consider rewording the question.
- Avoid “why” questions. Such questions can have a tendency to infer guilt or responsibility. In addition, answering a “why” question may require skills the witness does not have. However, some witnesses, including young children, may understand “How Come” questions.
- Do not visibly “react” to a witness’s disclosure of abuse, except perhaps to show interest. It is extremely important to monitor your body language.
- Avoid prompts and reinforcements such as “good job” or “I’m so happy that you told me about this.”
- Do not bribe a witness with food, toys or other improper rewards for a disclosure of abuse.
- Do not make promises you cannot keep.
- Do not allow the witness to feel that he/she is “in trouble” or “at fault.”
- Never ask the witness to remove clothing to explain or demonstrate the abuse.

3-2620 GUIDELINES FOR CONDUCTING INTERVIEWS IN ABUSE CASES (Continued)**3-2620****Guidelines for Interviewing the Licensee/Administrator**

- If the licensee was not present at the time of the alleged event, ask how, when and by whom the licensee was notified about the child's/client's condition.
- Determine the licensee's response to the allegation of abuse.
- Find out the person(s) that were with the child/client when the event occurred.
- Find out information about the parents and their whereabouts.
- Find out the person or persons (other than the licensee) primarily responsible for providing care and supervision to the child/client.
- Determine if the child/client has any other siblings (alive or deceased).
- Determine if the child/client has any medical problems.
- Obtain a signed medical release from the licensee or person with legal authority.
- Obtain consent to search any areas of the licensee's residence not subject to the department's inspection authority.

Guidelines for Interviewing the Alleged Perpetuator or Suspect of Abuse

- Determine what experience the suspect has in caring for children/clients/elderly.
- Establish rapport with the suspect.
- Carefully select the setting for the interview to ensure that the interview is conducted in privacy and free from distraction.
- Note the demeanor of the suspect at the time of the interview.
- Encourage the suspect to relate the incident in his or her own words.
- Determine if the suspect had exclusive care, custody and control of the child/client during the event and immediately prior to the event.
- In cases of physical abuse, try to determine a possible triggering mechanism, i.e., crying, toilet training/incontinence, stress, lack of sleep, drinking.
- Determine if the suspect has a history of drug or alcohol abuse.
- Determine if the suspect has a history of violence, does he/she easily lose their temper.
- If the victim received injuries, determine if and when the suspect summoned for help. A failure or delay in getting medical care may be very important.
- Determine if the suspect in the past has ever been accused of abusing this or any other person.

3-2620 GUIDELINES FOR CONDUCTING INTERVIEWS IN ABUSE CASES (Continued)**3-2620**

Be aware of some the most common defenses offered by alleged perpetrators or suspects of abuse:

- The victim died of an accident, or the suspect was playing rough with the victim.
- The victim's injuries are self inflicted, or the victim fell or did something to him/herself.
- A sibling or other child/client caused the injury to the victim.
- The injuries the victim sustained were the result of over-discipline.
- Someone else did it.
- The suspect has no idea what happened to the victim. Depending on the specific facts, this response may be completely unreasonable. For example, if the victim was unconscious or in a coma, most caretakers would have seen or heard something that could account for the condition if it was trauma related and not a medical problem.

Interviewing Medical Personnel

- Find out what explanation the person that brought the victim to the hospital or medical center gave for the victim's condition and/or injuries. Try to obtain exact quotes if possible.
- Find out what medical care was provided at the time the victim was brought in and what medical care is going to be given to the victim, i.e. surgery, prescriptions, etc.
- Find out what is the differential diagnosis for the victim's condition.
- Determine if the doctor has an opinion as to whether the injuries sustained by the child are accidental or inflicted and the facts upon which the opinion is based upon.
- Determine if the doctor can provide a timeframe for when the injury occurred.
- Find out from the doctor the victim's prognosis.
- Find out if the doctor discovered any old healing injuries.
- Find out the general medical condition of the victim, i.e. developmentally, nutritionally, etc.
- Determine if the doctor can describe the clinical course that the victim would have experienced with the type of injury the victim incurred. For example, would the victim have become unconscious immediately, would the victim still eat and be active after suffering such an injury, etc.
- Determine if the doctor will provide a written statement detailing his/her medical opinion as to whether the victim's injuries were accidental or inflicted and consistent with the statements of the licensee or other witnesses.
- If the victim died, ask the doctor if there was a possibility of successful medical intervention if there had not been a delay in seeking medical treatment.

3-2620 GUIDELINES FOR CONDUCTING INTERVIEWS IN ABUSE CASES (Continued)**3-2620**

- Identify and interview any emergency personnel (i.e. paramedics) involved in responding to the call; secure names, badge numbers, shifts, etc.
 - Determine what the call was about, and try to obtain an audio copy of the 911 or emergency telephone call.
 - Determine what explanation the caretakers or others gave to the paramedics for the victim's condition and injuries. Exact quotes are important if they can be obtained.
 - Determine what observations the paramedics made at the scene of people and events.
 - Determine what medical care was rendered to the victim, i.e. CPR, etc.
 - Obtain a written statement from the paramedics on what they did, saw and heard.

Guidelines for Interviewing the Victim

The following guidelines should be followed when interviewing the victim:

- Minimize the number of interviews. Prior to the interview, determine whether a multi-disciplinary team is or should be involved. Consider contacting and consulting with other agencies including but not limited to law enforcement, child welfare services, and the district attorney.
- Be objective and nonjudgmental. The first step in an investigative interview is being objective and having an open mind.
- Review all existing information before interviewing the witness.
- Try to find out what the witness was told about you and your purpose for speaking to the witness.
- Interview the witness as soon as possible after disclosure of abuse.
- Interview the witness alone whenever possible. Before interviewing the witness, explain to the parent/caregiver what you will be doing and the reason for interviewing the witness alone.
- Select a neutral, quiet and comfortable setting.
- Make sure the alleged perpetrator is not present on or near the interview site.
- Prior to the interview, obtain and become familiar with any information regarding the witness's developmental level and communication skills. Because a witness's chronological age is not always synchronized with his/her developmental age, it is important to assess the his/her developmental level.
- Select an interview time most conducive to the witness's schedule.
- Face the witness at his/her eye level. Do not stand over him/her.
- Explain your role to the witness.
- Begin with the general and non-threatening; move to the more specific and uncomfortable; then return to the more general and conclude with a friendly ending.
- Encourage the witness to tell what happened in his/her own words.
- Give appropriate interview instructions to the witness.

3-2620 GUIDELINES FOR CONDUCTING INTERVIEWS IN ABUSE CASES (Continued)**3-2620**

- Ask only one question at a time and wait for it to be answered. If the answer is non-responsive, wait for the answer before asking follow-up questions. Expect to have to repeat questions. Avoid double negatives and hypothetical questions.
- Try to determine what concerns the witness may have which could prevent or hinder disclosure.
- Avoid the use of leading and/or suggestive questions. Go from the open-to-the closed back to the open type of question.
- Avoid use of dolls, diagrams or other such devices until the witness discloses abuse.
- Use the phrase “show me” cautiously when seeking clarification from the witness. Use the witness’s words, use age appropriate language.
- Understand the witness’s sense of “time.” Use maps, diagrams, pictures, videos, television shows, etc. to assist the witness in determining time, place, relationships and/or events.
- Explain the need for additional interviews and end the interview on a positive note, thanking the witness. Tell the witness what may happen next (additional interviews, etc.) and what to do if he/she thinks of other information.

3-2620.1 ADDITIONAL CONSIDERATIONS WHEN INTERVIEWING CHILDREN:**3-2620.1**

If it becomes necessary to interview a suspected child abuse victim, the interview shall be conducted in accordance with the regulation guidelines under Penal Code Section 11174. Consequently, the assigned Program Investigator or Licensing Program Analyst should attempt to schedule interviews during the child’s class hours unless doing so would alert the person being investigated. One of the reasons for interviewing at the school is to prevent the alleged perpetrator from knowing that a complaint has been filed or that an investigation is in progress, as this could jeopardize the safety of the child.

Penal Code Section 11174.3 provides:

“(a) Whenever a representative of a child protective agency or the State Department of Social Services deems it necessary, a suspected victim of child abuse may be interviewed during school hours, on school premises, concerning a report of suspected child abuse that occurred within the child’s home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certified or classified employee or volunteer aide, to be present at the interview. A representative of the child protective agency or the State Department of Social Services shall inform the child of that right prior to the interview.”

**3-2620.1 ADDITIONAL CONSIDERATIONS WHEN INTERVIEWING 3-2620.1
CHILDREN: (Continued)**

“The purpose of the staff person’s presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.”

NOTE: If the staff person selected by the child declines to be present, the child may select an alternate staff person. If no staff person is willing to be present, or no staff person is acceptable to the child, the interview may continue with the child’s consent. If at any time during the interview, the child declines to continue, **then** the analyst must cease the interview. However, the analyst may consider contacting the child’s placement worker to assist in gaining the child’s cooperation. The analyst may also consider contacting the Department’s Legal Division and/or the **Program Investigation Unit** for advice in dealing with the interview situation.

“(b) The Superintendent of Public Instruction shall notify each school district and each [child protective agency], and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse **or neglect**, of the requirements of this section.”

Juvenile Court Records. If it becomes necessary to obtain copies of any juvenile court records, California Department of Social Services legal or the Community Care Licensing Division, the **Program Investigations Unit** should handle any request for such information. All requests will be made in accordance with the authorities granted in Welfare and Institutions Code Section 827. See Evaluator Manual section 1-1020, Evidence and Documentation.

**3-2620.3 ADDITIONAL CONSIDERATIONS WHEN
INTERVIEWING ELDERLY WITNESSES:****3-2620.3**

- Make sure the witness can hear you and focus on you. Because many elderly persons have vision problems, conduct the interview in an area free of glare and sufficiently lighted. Position the witness away from the glare.
- Make sure the witness can see your face and lips. Do not cover your mouth or speak while eating, smoking or chewing gum. Many elders lip-read to compensate for hearing loss.
- Keep background noise to a minimum.
- Be sure liquids are available for medication and comfort.
- Address the person by surname unless they give you permission to use some other name for them. Do not use patronizing terms such as “dear” or assume impairments. Ask if the elder is having difficulty understanding you. Ask if he or she needs eyeglasses or a hearing aid if you have detected hearing or vision loss.
- Be alert for feigned comprehension to cover confusion or memory loss.

3-2625 EVALUATING THE EVIDENCE**3-2625**

Arriving at a finding of unfounded, inconclusive or substantiated rests on a careful assessment of the quantity, quality and context of the evidence.

As a general matter, confidence in the evidence to arrive at a finding grows as both the quantity and quality of the evidence grows. However, quantity of evidence alone is not a satisfactory basis for decision-making. In any given case, two or three items of evidence may provide sufficient proof of abuse while, in another case, ten items of evidence may fail to persuade.

In evaluating evidence regarding physical and/or sexual abuse, determine to what extent the following types of data are present:

- Medical evidence of sexual or physical abuse.
- Convincing disclosure by the victim.
- Evidence that corroborates the abuse (i.e., admissions by the alleged perpetrator; physical and medical evidence).

When evaluating evidence, you must balance the statements of individuals and consider the evidence as a whole.

3-2625 EVALUATING THE EVIDENCE (Continued)**3-2625****Evaluating Statements of Individuals in General**

Factors to consider when weighing the statements of individuals include, but are not limited to, (also see Evaluator Manual section 1-1020, Evidence and Documentation):

- The extent of the individual's capacity to perceive, to recollect or to communicate.

NOTE: There is a presumption of an individual's capacity to testify regardless of age or disability. To testify, an individual must possess the capacity to observe, sufficient intelligence, adequate memory, ability to communicate, awareness of the difference between truth and falsehood, and an appreciation of the obligation to tell the truth.

- The extent of the individual's opportunity (personal knowledge) to perceive the matter.

NOTE: A witness must have personal knowledge of the event to be described, i.e., the witness must use the senses (sight, hearing, etc.) to perceive the event and register an impression the witness comprehends, remembers and communicates to the fact-finder. Memory need not be perfect as imperfections in recollection go to weight, not admissibility.

- The content and the character of the individual statement,

Does the story make sense?

- The existence or nonexistence of a bias, interest or other motive.

Does the individual providing the statement have an interest in the outcome or a motive to lie?

Is the witness hostile?

- The individual's character for honesty or veracity or lack thereof.

Is there any information regarding the reputation or opinion of the person's honesty or veracity?

Is there a prior felony conviction?

NOTE: The reputation of untruthfulness is circumstantial evidence that the statement of the individual's version of events is also a lie.

3-2625 EVALUATING THE EVIDENCE (Continued)**3-2625**

- A statement previously made by the individual that is inconsistent with any part of subsequent statements.

NOTE: Previous statement inconsistent with present statement tends to cast doubt on the truthfulness of the statements. The earliest version may be more accurate. By the same token, the extent to which the individual's statement is consistent over time generally tends to instill confidence on the truthfulness of the statements.

- A person's failure to explain or willful suppression of evidence.
- The individual's admission of untruthfulness.

Evaluating the Victim's Credibility

Factors to consider in evaluating the credibility of a victim's statement include but are not limited to:

- **Physical Evidence** – The existence of physical and medical indicators such as sexually transmitted diseases, pregnancy, genital tears, vaginal enlargements, and other medical conditions.
- **Psychological Reports** – The existence of reports of psychological testing which support or refute conclusion that the victim has been traumatized.
- **Cognitive Development** – Extent to which the victim can differentiate fact from fantasy and the victim's overall story is logical.
- **Consistency** – The victim's version of abuse is consistent over time; extent to which the victim's disclosure contains retractions, is conflicted or is recanted.
- **Language** – The extent to which the victim uses his/her own vocabulary (as opposed to normal adult terms); if vocabulary changes, do facts remain the same; is the event told from the victim's viewpoint.
- **Behavior** – Extent to which the victim's behavior is consistent with nature of allegations of abuse; i.e. child exhibits sexualized play during interview; child exhibits precocious or apparently seductive behavior; child's behavioral and/or affective response to anatomically correct dolls is typical of an abused child.
- **Age/developmentally inappropriate sexual knowledge** and extent to which the victim's statement relates progression of sexual activity (i.e. five year old with detailed knowledge of fellatio, including ejaculation).

3-2625 EVALUATING THE EVIDENCE (Continued)**3-2625**

- **Non sexual behavior** or symptoms commonly observed in sexually abused children (i.e. nightmares and regression).
- **Details** - Extent to which the victim has good recall of details, including sensory motor and idiosyncratic.
- **Motives** – The existence of any information that would indicate a reason for the victim to lie; extent to which the victim’s description of abuse relates elements of pressure or coercion.
- **History of sexual abuse** in the victim’s family and extent to which behavior of the victim’s family is consistent with behavior of other families in which sexual abuse is known to have occurred.
- **Credibility History** – Does the victim have any history of telling the truth or of lying.

Weighing and Considering all of the Evidence

After you evaluate the witness statements, look to all the evidence and weigh both the statements and other circumstantial evidence.

- Do the witness’s statements corroborate each other? If not, are the inconsistencies on major or insignificant issues.
- Have you considered the experts’ statements? Are the injuries or harm consistent with the licensee’s or other statements?
- Have you considered all of the physical evidence, including examination of the scene where the alleged incident took place, photographs, clothing, etc?
- Have you considered all of the medical evidence, including psychological reports?
- Have you considered all reports prepared by other agencies, including law enforcement?
- Look again at the complaint. Does the evidence substantiate the complaint? If not, does it substantiate an alternate allegation?

NOTE: For example, you cannot substantiate that the licensee hit the victim, but you can substantiate that the victim was hit while in care and therefore the licensee failed to protect or properly supervise.

3-2627 SPECIAL CIRCUMSTANCES REQUIRING MANDATORY CONSULTATION WITH LEGAL DIVISION**3-2627**

In all cases involving Priority I or Priority II allegations of abuse, if the analyst's preliminary opinion is that the complaint may be *inconclusive*, the following procedure must be followed:

- The analyst must serve a LIC 9099 to the facility informing the licensee that further investigation is needed and indicating an estimated time of completion, such as 30, 45, 60, or 90 days. (See Evaluator Manual section 3-2340, Exit Interview.)
- The analyst must notify and confer with a supervisor regarding the analyst evaluation of the evidence and reasons for arriving at the preliminary opinion that the complaint may be inconclusive.
- If the supervisor agrees with the analyst's preliminary determination, an attorney in the Legal Division must be consulted to review the evidence. This may be done at the monthly Legal Division consultation or by telephone, if necessary, with the pertinent documents being faxed for the attorney's review. If the Regional Office's regular consulting attorney is not available, the supervisor can ask to speak to another attorney or to the Deputy General Counsel. The opinion from the consulting attorney is to be recorded on the form labeled: CONSULTATION MEMORANDUM. This form is covered by attorney/client privilege and must be filed in the confidential section of the case file.
- A final complaint report cannot be issued to the licensee without consultation with an attorney in the Legal Division. If the attorney and the supervisor are not in agreement on the appropriate outcome for a complaint investigation, or that all information available has been collected and considered, the issue must be immediately brought to the attention of the Program Administrator or Regional Manager for a final decision.

3-2628 SPECIAL REQUIREMENTS FOR INVESTIGATIONS OF ABUSE OR NEGLECT IN RESIDENTIAL FACILITIES**3-2628**

When an investigation of abuse or neglect in a residential facility may be leading to a recommendation for a Temporary Suspension Order, it is important that a complete picture of a facility's operation is obtained to ensure that a less severe remedy is not more appropriate. When immediate facility closure is not an issue, there is ample opportunity for all points of view to be considered in the development of the final complaint resolution. With a Temporary Suspension Order investigation, such an opportunity is not available; the clients have been moved and the facility's operation has been closed down.

When a serious abuse complaint is being investigated for which a Temporary Suspension Order is a likely outcome, the assigned Program Investigator or Licensing Program Analyst **is** expected to contact with placement agencies and other professionals regarding general facility conditions prior to submitting the case to the Program Administrator. The only exception **is** when the licensee is directly involved in the abuse or other serious incidents that have occurred, **as the facility conditions then are not relevant to the possible license suspension.**

3-2628 SPECIAL REQUIREMENTS FOR INVESTIGATIONS OF ABUSE OR NEGLECT IN RESIDENTIAL FACILITIES (Continued) **3-2628**

Contacts should be made with:

1. Placement agencies or authorized representatives for specific facility clients involved in the abuse allegation.
2. Local law enforcement regarding incidents at the facility and reported run-aways.
3. Medical, psychiatric and psychological professionals known to have contact with clients in the facility.

The Licensing Program Analyst or **Program** Investigator should discuss general facility conditions, perceptions regarding the quality of care at the facility, and concerns with any aspect of the facility's operation.

Typical questions will address:

1. Last contact with a child/client in placement.
2. Last visit to the facility site and physical observations.
3. Any complaints received from children/clients in care.

Care should be taken not to disclose any information regarding the investigation or expected licensing agency actions. Information obtained during the contacts will be included in the Statement of Facts. Since the processing of Temporary Suspension Order actions is done as rapidly as possible, these supplemental contacts need to be made immediately. If possible, the individual contacted should be asked to submit comments or concerns in writing. When time does not permit, telephone contact will be sufficient. This information should be documented on the Detail Supportive Information Form, LIC 812 or the **Program** Investigator's report.

If the information obtained indicates that actions would be taken to resolve the problem and minimize the risk to clients (i.e., removal of certain staff, increased supervision, relocation of dangerous clients), the **Program Administrator** and the attorney shall change the Temporary Suspension Order recommendation and seek other remedies.

3-2628 SPECIAL REQUIREMENTS FOR INVESTIGATIONS OF ABUSE OR NEGLECT IN RESIDENTIAL FACILITIES (Continued) 3-2628

The Deputy Director for the Children and Family Services Division (or his/her designee) will sign off on all Temporary Suspension Order actions involving children's residential facilities prior to the case coming to the Community Care Licensing Division Deputy Director. The assigned attorney will route the case through the Children and Family Services Deputy and will include information gathered from placement agencies and other professionals for program review. When there is disagreement between the two deputies regarding the action to be taken, the attorney will coordinate a meeting to resolve the issue.

3-2630 MAKING THE DETERMINATION: APPLYING THE PROPER STANDARD OF PROOF 3-2630

The proper standard of proof for a Community Care Licensing administrative action seeking is ***preponderance of the evidence***. This means that 51 percent of the evidence must support a substantiated finding that the alleged sexual or physical abuse occurred. Put another way, preponderance of the evidence means that one body of evidence has more convincing force than the evidence opposed to it, i.e. an objective and reasonable review of all the evidence reveals that it is more likely than not that the alleged abuse occurred.

This standard is to be distinguished from two other standards of proof. The criminal standard requires evidence "beyond a reasonable doubt to a moral certainty" that the alleged abuse occurred. The "clear and convincing" evidentiary standard is generally applied in certain civil actions seeking termination of parental rights or revocation of professional licenses for doctors or dentists. Both of these standards impose a higher burden of proof than that required by the preponderance of the evidence standard.

NOTE: Investigations conducted by law enforcement in general apply the "beyond a reasonable doubt" standard in deciding whether to file criminal charges. Do not automatically assume, simply because law enforcement authorities decide not to prosecute, that sufficient evidence does not exist to pursue an administrative action under the preponderance of the evidence standard.

3-2635 MAKING THE DETERMINATION: IS THE COMPLAINT UNFOUNDED, INCONCLUSIVE, OR SUBSTANTIATED? 3-2635

Once you have evaluated and weighed all of the evidence, you should be prepared to offer an opinion as to whether the complaint is unfounded, inconclusive or substantiated.

Unfounded: A finding that the complaint is ***unfounded*** means that the allegation is false, could not have happened, and/or is without a reasonable basis.

- A false allegation means that there is evidence that the allegation was fabricated. It could imply a lack of good faith in the initial report. For example, two credible witnesses provide statements that the person making the allegation admitted to them in separate conversations that the allegation was false, but that the person was making the allegation to retaliate against the alleged perpetrator for some reason.

3-2635 MAKING THE DETERMINATION: IS THE COMPLAINT UNFOUNDED, INCONCLUSIVE, OR SUBSTANTIATED?
(Continued)**3-2635**

- An allegation that could not have happened means that there is evidence establishing that it is impossible for the allegation to have happened. The classic example is where the alleged victim denies the abuse and the alleged perpetrator was out of the country at the time the alleged abuse took place.
- An allegation that is without reasonable basis means that applying a reasonable person test, the allegation did not happen. For example, if the allegation were that the alleged perpetrator had **kicked a victim with his feet**, but reports from three different doctors indicate that the alleged perpetrator **cannot move his feet or legs**, then reasonable people would agree that the allegation is without a reasonable basis.
- **NOTE:** If reasonable people could disagree as to whether the allegation happened, or if you think it happened but sufficient evidence cannot be provided, then the complaint is inconclusive, not unfounded.

Inconclusive: A finding that the complaint is *inconclusive* means that although the allegation may have happened or is valid, there is not a preponderance of the evidence to prove that the alleged abuse occurred. *If your opinion is that the Priority I or II complaint appears to be inconclusive, you must inform your supervisor, and an attorney in the Legal Division must be consulted prior to entering a written finding of inconclusive on your report.* See Evaluator Manual section 3-2632, Special Circumstances Requiring Mandatory Consultation with Legal Division.

Substantiated: A finding that the complaint is *substantiated* means that the allegation is valid because the preponderance of the evidence standard has been met. The facility is cited and the appropriate administrative action initiated, i.e. Temporary Suspension Order/revocation, immediate exclusion order issued, statement of issue to deny license, etc.

Commonly Held Myths:

- A complaint is inconclusive or unfounded if the licensee or alleged perpetrator denies the allegation.
- A complaint is inconclusive or unfounded if there is no criminal prosecution.
- A complaint is inconclusive or unfounded because there are conflicts in the statement of the victim and other witnesses.
- A complaint of sexual abuse of a victim is inconclusive or unfounded simply because the victim recants.

3-2635 MAKING THE DETERMINATION: IS THE COMPLAINT UNFOUNDED, INCONCLUSIVE, OR SUBSTANTIATED?
(Continued)**3-2635**

- If any aspect of the complaint is wrong, the complaint is inconclusive or unfounded. [Example: The complaint alleges the victim was hit with a spoon, but the evidence shows it was actually a ruler.]
- A complaint is inconclusive if it is the victim's word against the alleged perpetrator.
- A complaint is unfounded if all you have is circumstantial evidence.

3-2640 INFORMING THE LICENSEE OF COMPLAINT**3-2640**

Regardless of which agency conducted the investigation, the licensing agency can use the findings to decide what action, if any, shall be taken. As such, it is important to realize that even though a law enforcement agency's investigation did not find evidence sufficient to prosecute as a criminal case, their findings may still serve as the basis for disciplinary licensing action.

A return visit to the facility is not always necessary in order to notify the licensee of the complaint allegations and investigative findings. The following actions would appropriately substitute for the return visit if initiated within one month of substantiating the allegation:

1. Service of a Temporary Suspension Order and Accusation;
2. Service of an Accusation to revoke the license;
3. Service of a Statement of Issues to deny a license application;
4. Noncompliance Conference;
5. Notice to a Foster Family Agency to decertify a Certified Family Home.

If the physical or sexual abuse allegations are substantiated and are to be the basis for one or more of the above actions, and the names and phone numbers of the clients and their representatives have already been obtained during the investigation process, it is not necessary to make a facility visit to inform the licensee of the complaint allegations. Because Temporary Suspension Order actions are fairly immediate, the service of the Temporary Suspension Order and Accusation would suffice for informing the licensee. The Accusation to revoke an existing license, the Statement of Issues to deny an application, or the order to a Foster Family Agency to revoke the certificate of approval to a Certified Family Home would also serve the same purpose, provided it is served within one month of the substantiation of the allegations. If an Accusation cannot be served within 30 days, a Noncompliance Conference should be conducted.

3-2640 INFORMING THE LICENSEE OF COMPLAINT (Continued) 3-2640

When revocation action is not imminent (the case has not been referred to Legal for administrative action), the disciplinary action process should be initiated by scheduling a Noncompliance Conference at which time the licensee would be informed of the complaint allegations and conclusions. During this conference, the licensee should be advised that this meeting is taking place because of substantiation of a serious violation and is the last opportunity to come into compliance before the licensing agency recommends administrative action against the license.

If the complaint does not result in any administrative action, the complaint information must be transmitted to the licensee via the LIC 9099 during the return visit to the facility. Refer to Evaluator Manual section 3-2315 for resolution codes.

3-2645 NOTIFYING RESOURCE AND REFERRAL AGENCIES 3-2645

Resource and Referral Agencies funded by the State Department of Education, Child Development Division, are to be notified within 24 hours of a substantiated complaint finding of physical or sexual abuse in a child day care facility. This notification may be done by telephone and documented on the Detail Supportive Information Form, LIC 812, or by sending a copy of the LIC 9099 or other appropriate public document. The notification should include the substance of the complaint and the results of the investigation.

The analyst should not release any information to the Resource and Referral Agency prior to completing the investigation.

For additional reporting requirements to Resource and Referral Agencies and State Department of Education, refer to Evaluator Manual sections 4-2100 and 4-2110.

3-2650 NOTIFYING THE LOCAL LONG-TERM CARE OMBUDSMAN 3-2650

Under a Memorandum of Understanding with the Office of the Long-Term Care Ombudsman, each Regional Office is responsible for notifying the local Ombudsman Program of substantiated complaints against Residential Care Facilities for the Elderly and Adult Residential Facilities. The Regional Offices must also provide the local Ombudsman, in a timely manner, with legible copies of all LIC 809s and 9099s for all Residential Care Facilities for the Elderly and Adult Residential Facilities in the Regional Office's local planning and service area.

3-2700 CHILD ABUSE CENTRAL INDEX PROCEDURES 3-2700**PROCEDURE**

The California Department of Social Services is required to check the Child Abuse Central Index by submitting an LIC 198A - Child Abuse Central Index to the Department of Justice as specified in Section 11170 of the Penal Code and Sections 1522.1 and 1596.877 of the Health and Safety Code Section. This inquiry must be made prior to granting a license or approving an individual to care for children.

3-2700 CHILD ABUSE CENTRAL INDEX PROCEDURES (Continued)**3-2700****PROCEDURE (Continued)**

The Department of Justice will conduct a search of the Child Abuse Central Index. The findings are returned to the Community Care Licensing's Caregiver Background Check Bureau, and will reflect one of the following:

1. Possible match.
2. Unable to confirm a match to any report on file.
3. No match to any report on file entered as an applicant.

The Caregiver Background Check Bureau will input the response from the Department of Justice on the Caregiver Background Check System. Possible matches are referred to the Caregiver Background Check Bureau's Background Information Review Section. The Background Information Review Section will notify the individual and conduct a preliminary investigation (See Evaluator Manual section 6-1400 rev 5-00).

The Background Information Review Section will clear cases where the underlying investigative facts do not support the allegation of abuse. Allegations of child abuse supported by the underlying facts are referred to the Regional Office.

3-2710 INVESTIGATION**3-2710**

When a case is referred to the Regional Office by the Background Information Review Section an investigation must be conducted similar to a complaint investigation referenced in Evaluator Manual section 3-2000. Do not inform the licensee that the employee is the subject of a child abuse investigation. The Regional Office has 60 days to conduct the Child Abuse Central Index possible match investigation. The following steps are especially applicable to the Child Abuse Central Index investigation:

1. Obtain all available reports from agencies involved in the original child abuse investigation.
2. If the subject of the Child Abuse Central Index investigation is an applicant for a family day care home, contact the Child Protective Services agency of the county the subject has resided in for the two years preceding the application.
3. If the person has a current or prior association on the Caregiver Background Check System, obtain copies of any prior investigation(s) that the Department conducted.
4. Contact all potential witnesses as you would for a complaint investigation.
5. You may ask the individual to provide an explanation of what happened in their own words. Have the subject send the letter of explanation or declaration to the Regional Office. Refer to Documentation Section 3-3520 of the Evaluator Manual. Document this request.

3-2710 INVESTIGATION (Continued)**3-2710**

When all relevant information has been compiled and analyzed, discuss any substantiated findings of child abuse or neglect with your Local Unit Manager. The fact that the allegation is substantiated does not automatically require the denial of the application, the exclusion of the employee or an order to the Foster Family Agency to deny or revoke a certificate of approval. If the facts that can be substantiated are serious enough to raise concern about that person being in contact with children in our facilities, the Regional Office must consider employee exclusion, or other administrative action against the applicant, licensee, or the current or prospective certified family home.

If the decision is not clear, the Regional Office may have the individual come in for an office visit with the Regional Office Manager or supervisor to gain greater insight into the person's behavior and judgment. If the Regional Office has further questions about the Child Abuse Central Index possible match and whether legal action is appropriate, it should consult with the attorney from the Legal Division. Please note that all Regional Office employee exclusions require the approval of Legal.

If the Regional Office determines that legal action is merited, proceed according to the relevant Evaluator Manual sections as follows:

1. Sections 1-1400 through 1-1425 for employee exclusion actions;
2. Sections 1-1400 and 1-1450 for resident exclusions;
3. Sections 1-1400 and 1-1430 for Foster Family Agency Certified Family Home;
4. Sections 1-1000 through 1-1280 for denial of an application on other actions against a licensee.

After the Regional Office renders a recommendation of the Child Abuse Central Index possible match investigation, the appropriate decision box on the Child Abuse Central Index Transmittal must be checked and forwarded along with any documents gathered during the course of the investigation to the Background Information Review Section, MS 19-62, for entry into the Caregiver Background Check System.

Child Abuse Central Index information is highly sensitive. Therefore, care must be taken when documenting the Child Abuse Central Index investigation to ensure confidentiality. Documentation of the Child Abuse Central Index investigation should be recorded on an LIC 812 Detail Supportive Information.

3-2720 DOCUMENTATION AND STORAGE**3-2720**

Separate LIC 812s should be used for the Child Abuse Central Index investigation and not intermingled with any other documents. Documentation and evidence obtained during the Child Abuse Central Index investigation should be kept in a separate folder and not placed in the facility file.

If the Regional Office decides that legal action is not merited at the conclusion of the investigation, the Child Abuse Central Index investigation material **MUST NOT** be placed in the public portion of the facility file to prevent misuse of the Child Abuse Central Index information. At the end of the investigation, notify the subject of the Child Abuse Central Index investigation by letter that no legal action is to be taken and do not place this letter in the public portion of the facility file.

3-2720 DOCUMENTATION AND STORAGE (Continued)**3-2720**

If the Regional Office substantiates the allegation of child abuse or neglect, but does not plan to take legal action against the individual, document the reasons for this action. Do not place this letter in the public portion of the facility file.

If the Regional Office decides that legal action is merited at the conclusion of the Child Abuse Central Index investigation, follow the relevant Evaluator Manual sections for the planned legal action. However, the reason for the legal action is not a denied Child Abuse Central Index clearance. The reason for the legal action are the underlying facts that present a danger to the children in care. The denial or employee exclusion letter is a public document and can be placed in the public portion of the facility file. However, the Child Abuse Central Index investigation documentation is still confidential and is not to be placed in the public file.

After the Child Abuse Central Index investigation is completed, all the documents obtained during the course of the investigation should be filed in the confidential section of the facility file.

Child Abuse Central Index information is highly sensitive. Therefore, care must be taken when documenting the Child Abuse Central Index investigation to ensure confidentiality. Documentation of the Child Abuse Central Index investigation should be recorded on a LIC 812 Detail Supportive Information.

For additional information and requirements of the Memorandum of Understanding, refer to Appendix E.